

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:

ELECTRIC TRANSPORTATION ENGINEERING  
CORPORATION (d/b/a ECOTALITY NORTH  
AMERICA), *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 2:13-BK-16126 (MCW)

Jointly Administered

This filing applies to:

- ☒ All Debtors  
☐ Specified Debtors

**DISCLOSURE STATEMENT FOR  
DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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Dated: July 1, 2014

**This Disclosure Statement is being submitted for approval but has not been approved by the Bankruptcy Court. This is not a solicitation of acceptance or rejection of the Plan. Acceptance or rejection may not be solicited until a disclosure statement has been approved by the Bankruptcy Court either on a preliminary or final basis. The information in the Disclosure Statement is subject to change. This Disclosure Statement is not an offer to sell any securities and is not soliciting an offer to buy any securities.**

<sup>1</sup> The Debtors in these jointly administered chapter 11 cases and the last four digits of their respective Employer Identification Numbers are: (i) ECotality, Inc. (5422); (ii) Electric Transportation Engineering Corporation (4755); (iii) ECotality Stores, Inc. (2643); (iv) ETEC North, LLC (n/a); (v) The Clarity Group, Inc. (8832); and (vi) G.H.V. Refrigeration, Inc. (4512). The Debtors' service address is ECotality, Inc., P.O. Box 20336, Phoenix, AZ 85036-0336.



THIS DISCLOSURE STATEMENT (INCLUDING ALL EXHIBITS HERETO, THE “**DISCLOSURE STATEMENT**”) IS BEING PROVIDED PURSUANT TO BANKRUPTCY CODE SECTION 1125(B) BY THE DEBTORS FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE DEBTORS’ JOINT CHAPTER 11 PLAN OF LIQUIDATION (THE “**PLAN**”), WHICH HAS BEEN FILED WITH THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA (THE “**BANKRUPTCY COURT**”). A COPY OF THE PLAN IS ATTACHED HERETO AS **EXHIBIT A**.

ALL CAPITALIZED TERMS USED BUT NOT OTHERWISE DEFINED WITHIN THIS DISCLOSURE STATEMENT SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.

THE SUMMARIES OF THE PLAN CONTAINED HEREIN SHALL NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO MAKE A JUDGMENT WITH RESPECT TO, AND DETERMINE HOW TO VOTE ON, THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN AND DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL OF THE TERMS OF THE PLAN OR THE DOCUMENTS REFERRED TO THEREIN. YOU SHOULD REVIEW THE PLAN AND SUCH DOCUMENTS IN THEIR ENTIRETY FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, THE DEBTORS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, THE DEBTORS, THEIR ESTATES AND OTHER PARTIES IN INTEREST.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION PASSED UPON ITS ACCURACY.

NO REPRESENTATION CONCERNING THE DEBTORS OR THE VALUE OF THE DEBTORS’ ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE STATEMENT APPROVED BY THE BANKRUPTCY COURT. THE DEBTORS AND COMMITTEE ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED HEREIN AND IN THE PLAN.

YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL AND TAX ADVISORS TO UNDERSTAND FULLY THE PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE SUCH DATE. THIS DISCLOSURE STATEMENT IS INTENDED, AMONG OTHER THINGS, TO SUMMARIZE THE PLAN AND MUST BE READ IN CONJUNCTION WITH THE PLAN AND ITS EXHIBITS, IF ANY. IF ANY CONFLICTS EXIST BETWEEN THE PLAN AND DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

**THE DEADLINE TO ACCEPT OR REJECT THE PLAN IS AUGUST 25, 2014 AT 5:00 P.M. (ARIZONA TIME) (THE “VOTING DEADLINE”), UNLESS THE DEBTORS EXTEND THE VOTING DEADLINE. TO BE COUNTED, A BALLOT (“BALLOT”) INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS LLC, THE DEBTORS’ NOTICE, CLAIMS AND BALLOTING AGENT (THE “CLAIMS AND NOTICING AGENT”), NO LATER THAN THE VOTING DEADLINE AT THE FOLLOWING ADDRESS:**

**ECOTALITY BALLOT PROCESSING CENTER  
c/o KURTZMAN CARSON CONSULTANTS LLC  
2335 ALASKA AVENUE  
EL SEGUNDO, CALIFORNIA 90245**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, THE DEBTORS (INCLUDING, WITHOUT LIMITATION, THOSE HOLDERS OF CLAIMS OR EQUITY INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, TO THE EXTENT APPLICABLE, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN.**

**CERTAIN IMPORTANT DATES AND DEADLINES:<sup>2</sup>**

<b><u>DEADLINE</u></b>	<b><u>DATE</u></b>
Voting Record Date	July 15, 2014
Deadline for Filing Plan Supplement	August 18, 2014
Voting Deadline	August 25, 2014 at 5:00 p.m. (Arizona time)
Final Disclosure Statement and Plan Objection Deadline	August 25, 2014
Submission of Voting Report	September 3, 2014
Debtors’ Reply Deadline	September 5, 2014
Disclosure Statement and Confirmation Hearing	September 9, 2014

<sup>2</sup> Subject to the Court’s approval and availability.

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## **EXHIBITS**

**Exhibit A**      Plan of Liquidation

**Exhibit B**      Biography of Proposed Liquidating Trustee

**THE DEBTORS HEREBY ADOPT AND INCORPORATE EACH EXHIBIT ATTACHED TO THIS  
DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN**

## I. EXECUTIVE SUMMARY

The Debtors submit this Disclosure Statement pursuant to Bankruptcy Code section 1125 to certain holders of Claims against the Debtors in connection with the solicitation of acceptances with respect to the Plan. A copy of the Plan is attached hereto as **Exhibit A** and incorporated herein by reference. This Disclosure Statement describes certain aspects of the Plan, including the treatment of holders of Claims and Equity Interests, and also describes certain aspects of the Debtors' operations and other related matters.

**The Debtors and the Committee believe that the Plan is fair and equitable, maximizes the value of the Estates and provides the best recovery to holders of Claims. At this time, the Debtors believe this is the best available alternative for completing the Chapter 11 Cases. For these reasons and others described herein, the Debtors and the Committee strongly recommend that Creditors entitled to vote on the Plan vote to accept the Plan.**

## II. IMPORTANT INFORMATION ABOUT THE DISCLOSURE STATEMENT

This Disclosure Statement provides information regarding the Plan. The Debtors believe that the Plan is in the best interests of all creditors and urge all holders of Claims entitled to vote on the Plan to accept the Plan.

Unless the context requires otherwise, any references to "we," "our" and "us" are to the Debtors.

The confirmation and effectiveness of the Plan are subject to certain material conditions precedent described herein and in the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Effective Date to occur will be satisfied (or waived).

**If you are a Creditor entitled to vote on the Plan, you are encouraged to read this Disclosure Statement in its entirety, including, without limitation, the Plan, and the section entitled "Risk Factors," before submitting your Ballot to vote on the Plan.**

Summaries of the Plan and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan, this Disclosure Statement and the Plan Supplement, and any exhibits, schedules or amendments thereto, as applicable, and the summaries of the financial information and the documents annexed to this Disclosure Statement or otherwise incorporated herein by reference, are qualified in their entirety by reference to those documents. The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained herein will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement.

The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose. The Debtors believe that the summary of certain provisions of the Plan and certain other documents and financial information contained or referenced in this Disclosure Statement is fair and accurate. The summaries of the financial information and the documents annexed to this Disclosure Statement, including, but not limited to, the Plan, or otherwise incorporated herein by reference, are qualified in their entirety by reference to those documents.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission ("SEC") or any federal, state, local or foreign regulatory agency, nor has the SEC or any other such agency passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement.

The Debtors have sought to ensure the accuracy of the financial information provided in this Disclosure Statement, but the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been, and will not be, audited or reviewed by the Debtors' independent auditors unless explicitly stated herein.

### III. QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT AND THE PLAN

#### A. What is chapter 11?

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for similarly situated creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the bankruptcy commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

Consummating a plan is the principal objective of a chapter 11 case. The Bankruptcy Court’s confirmation of a plan binds the debtor, any person or entity acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court, in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan provides for the treatment of the debtor’s debt in accordance with the terms of the confirmed plan.

#### B. Why are the Debtors sending me this Disclosure Statement?

The Debtors will be seeking to obtain Bankruptcy Court approval of the Plan. In connection with soliciting acceptances of the Plan, Bankruptcy Code section 1125 requires the Debtors to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Plan. This Disclosure Statement has been prepared in accordance with these requirements.

The Debtors will be seeking conditional approval of the Disclosure Statement and will be seeking final approval of the Disclosure Statement at the Confirmation Hearing. Upon conditional approval of the Disclosure Statement by the Bankruptcy Court, the Debtors intend to distribute the Disclosure Statement and the Plan in connection with the solicitation of votes on the Plan.

#### C. Am I entitled to vote on the Plan?

Your ability to vote on, and your distribution under, the Plan, if any, depends on what type of Claim or Equity Interest you hold. Each category of holders of Claims or Equity Interests, as set forth in Article II of the Plan pursuant to Bankruptcy Code section 1122(a), is referred to as a “Class.” The respective voting status of each Class is set forth below.

The table below designates the Classes of Claims against, and Equity Interests in, each of the Debtors and specifies which of those Classes are Impaired or Unimpaired by the Plan. **For a complete description of the Debtors’ classification and treatment of Claims and Equity Interests, reference should be made to Article II of the Plan.**

#### 1. Summary of Classification of Claims and Equity Interests.

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
1	Allowed Secured Claims	Unimpaired	No (deemed to accept)
2	Allowed Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
3	Allowed General Unsecured Claims	Impaired	Yes
4	Intercompany Claims	Impaired	No (deemed to reject)



5	Section 510(b) Claims	Impaired	No (deemed to reject)
6	Equity Interests	Impaired	No (deemed to reject)

**D. What will I receive from the Debtors if the Plan is consummated?**

The Plan is premised upon the substantive consolidation of the Estates into a single Estate. As a result of the substantive consolidation of the Estates, each Class of Claims and Equity Interests will be treated as a single consolidated Estate regardless of the separate identification of the Debtors.

The following table summarizes the anticipated recoveries for holders of Allowed Claims and Equity Interests under the Plan. **The expected recoveries set forth below are for illustrative purposes only and are subject to material change based on, among other things, changes in the amount of Claims that are Allowed.**

**1. Summary of Estimated Recoveries Under the Plan.**

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Estimated Recovery</u>
1	Allowed Secured Claims	Unimpaired	100%
2	Allowed Priority Non-Tax Claims	Unimpaired	100%
3	Allowed General Unsecured Claims	Impaired	Up to 8% <sup>3</sup>
4	Intercompany Claims	Impaired	0%
5	Section 510(b) Claims	Impaired	0%
6	Equity Interests	Impaired	0%

**E. What will holders of General Unsecured Claims receive under the Plan?**

Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed General Unsecured Claim, each holder thereof shall receive cash in an amount equal to the *pro rata* share of the Unsecured Claims Fund.

**F. How do I vote on the Plan and what is the Voting Deadline?**

Detailed instructions regarding how to vote on the Plan are contained on the Ballots distributed to holders of Claims that are entitled to vote on the Plan. For your vote to be counted, your original Ballot must be completed, signed and submitted so that it is **actually received** by the Claims and Noticing Agent by **August 25, 2014 at 5:00 p.m. (Arizona Time)**. See Article IX below for additional information on Solicitation and Voting Procedures.

**G. What will I receive from the Debtors if I hold an Administrative Expense Claim, a Compensation Claim or a Priority Tax Claim?**

In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims, Compensation Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Equity Interests set forth in Article II of the Plan. These Claims will be satisfied as set forth in Sections 2.1, 2.2 and 2.4 of the Plan, respectively.

<sup>3</sup> Subject to material change based on, among other things, claims objections as well as the realization of Causes of Action and other assets.

**H. If the Plan provides that I get a distribution, do I receive that distribution upon Confirmation or when the Plan goes effective, and what is meant by “Confirmation,” “Effective Date” and “Consummation?”**

“Confirmation” of the Plan refers to the approval of the Plan by the Bankruptcy Court. Confirmation of the Plan does not guarantee that you will receive the distribution indicated under the Plan. After Confirmation of the Plan by the Bankruptcy Court, there are conditions that need to be satisfied or waived so that the Plan can go effective. In addition, the Debtors or the Liquidating Trustee, as applicable, may object to your Claim (whether it was filed with a proof of claim or scheduled by the Debtors), which may further delay distribution. See Article X below for a discussion of the conditions to Confirmation and Consummation of the Plan.

Initial distributions to holders of Allowed Claims will be made on the date the Plan becomes effective, the “Effective Date,” or as soon as practicable thereafter, as specified in the Plan.

**I. Will there be releases granted to parties in interest as part of the Plan?**

Yes. See Article IX of the Plan, which is incorporated herein by reference.

**J. Why is the Bankruptcy Court holding a Confirmation Hearing and when is the Confirmation Hearing set to occur?**

Bankruptcy Code section 1128(a) requires the Bankruptcy Court to hold a hearing on Confirmation of the Plan and recognizes that any party in interest may object to Confirmation of the Plan.

The Debtors will request that the Bankruptcy Court promptly schedule a Confirmation Hearing at the same time as the final hearing on approval of the Disclosure Statement and will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned or continued from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be filed and served on the Debtors and certain other parties prior to the Confirmation Hearing in accordance with the notice of the Confirmation Hearing.

The Debtors will publish the notice of the Confirmation Hearing, which will contain, among other things, the deadline for objections to the Plan and the date and time of the Confirmation Hearing, in the national edition of *The New York Times*, or a publication with similar distribution, to provide notification to those Persons or Entities who may not receive notice by mail.

**K. What is the purpose of the Confirmation Hearing?**

The confirmation of a plan by a bankruptcy court binds the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan, any creditor or equity interest holder of a debtor and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan discharges a debtor from any debt that arose before the confirmation of the plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

**L. What is the effect of the Plan on the Debtors’ ongoing business?**

The Debtors are liquidating under chapter 11 of the Bankruptcy Code. As a result, subject to the occurrence of the Effective Date, Confirmation means that the Debtors will no longer be in business. Following Confirmation, the Plan will be consummated on the Effective Date, which is a date selected by the Debtors that is a Business Day on or after the Confirmation Date on which (i) no stay of the Confirmation Order is in effect and (ii) the conditions to the effectiveness of the Plan specified in Section 8.1 of the Plan have been satisfied or, if capable of being waived, waived. In addition, on the Effective Date, the Liquidating Trust shall be created. As of the Effective Date, all of the Liquidating Trust Assets shall be transferred to the Liquidating Trust, pursuant to the terms of the Liquidating Trust Agreement. The Liquidating Trust shall be established for the sole purpose of

liquidating and distributing its assets to holders of Allowed Claims in accordance with the terms of the Plan and the Liquidating Trust Agreement.

**M. Who do I contact if I have additional questions with respect to this Disclosure Statement or the Plan?**

If you have any questions regarding this Disclosure Statement or the Plan, you may contact the Debtors' co-counsel at the addresses and phone numbers listed on the cover page of this Disclosure Statement. Copies of the Plan and this Disclosure Statement may be obtained by contacting the Claims and Noticing Agent either by telephone, (866) 967-1788, by emailing ECOInfo@kccllc.com, or by visiting www.kccllc.net/ECOTality.

**N. Do the Debtors recommend voting in favor of the Plan?**

Yes. The Debtors believe that the Plan provides for a larger distribution to the Debtors' Creditors than would otherwise result from any other available alternative.

**IV. THE DEBTORS' BACKGROUND**

Originally formed in 1999 as a marketing enterprise for biodegradable products, the Debtors rebranded themselves in November 2006 to reflect their businesses' renewable energy strategy. Collectively, the Debtors were a leader in advanced electric vehicle ("EV") charging and energy storage systems, with over twenty years of experience in designing, manufacturing, testing and commercializing such technologies. As an industry leader and innovator in these fields, the Debtors primarily operated three complementary business segments: (a) Blink; (b) Minit-Charger; and (c) eTec Labs. In addition to their complementary business segments and as a result of the Debtors' extensive history in the EV supply equipment industry, the Debtors were successful in winning bids for public and private funding to support and manage EV charging infrastructure research and deployment programs, including, most notably, a \$100.2 million cost-share grant (the "DOE EV Project Contract") from the DOE to lead, support and manage the largest deployment of EVs and charging infrastructure in United States history (the "EV Project"). The Debtors also received an \$8.0 million grant from the California Energy Commission with respect to deploying charging infrastructure and EVs in the San Diego, California region.

**A. The Debtors' Businesses**

As noted above, the Debtors mainly operated three distinct, yet complementary, business segments: (a) Blink; (b) Minit-Charger; and (c) eTec Labs. Under the Blink brand, the Debtors offered electric vehicle charging stations and a turnkey network operating system for EV drivers, commercial businesses and utilities. Minit-Charger manufactured and distributed fast-charging systems for material handling and airport ground support vehicles. The eTec Labs business segment was a trusted research and testing resource for governments, automotive original equipment manufacturers ("OEMs") and utilities.

**1. Blink**

The Debtors' flagship passenger vehicle product line consisted of Blink charging stations, which were available for both residential and commercial applications. The Debtors installed approximately 13,500 Blink charging stations, which consisted of the following: Level 2 wall-mount units, commonly referred to as the Blink Residential Charger (the "Blink Residential"); a commercial stand-alone Level 2 charger, commonly known as the Blink Level 2 Pedestal Charger (the "Blink Pedestal"); and the Blink DC Fast Charger (the "Blink DC").

The Blink Residential chargers, generally consumer in nature, were typically installed in an individual's home, garage or carport, and were available in both hardwired and plug-in models. The Blink Pedestal charger, on the other hand, was designed for commercial applications and was installed where drivers normally travel – movie theaters, shopping malls, coffee shops, restaurants and retailers. Through these convenient locations, individuals could utilize chargers in the ordinary course of their day-to-day activities, thereby extending the range of their EVs. Both the Blink Residential and Blink Pedestal chargers were capable of delivering a full charge to a consumer's EV in approximately two to eight hours. The Blink DC charger was a fast charging system that was capable of delivering a full charge to an EV in less than 30 minutes (depending on battery size). Major customers that installed

Blink chargers included Cracker Barrel, Fred Meyer, IKEA, Kimpton Hotels, Kohl's, Macy's, Mapco, McDonald's, Regency Centers, Sears and WalMart.

In addition to providing physical charging locations, each of the Blink chargers was connected through the "Blink Network," which was a cloud-based operating system that provided distinct advantages to both EV drivers and the Debtors. The connection of the chargers to a central computer via cellular services and the Internet created the Blink Network. This provided for what the industry describes as smart charging services and allowed the Debtors to provide device management and provisioning, location pricing customization, transaction processing, payment gateways, data collection, content management, reservation capabilities and integration with utility smart grid services and load management and demand response programs. This enabled automated or cloud-based demand response and energy management services, thereby providing virtual control of, and access to data regarding, EVs in the Blink Network, charging events, and the Blink charging stations themselves. These services were widely viewed by the major industry participants to provide valuable services to vehicle drivers as demonstrated by a customer enrollment rate of 500 new memberships a week. Smart charging also allowed for the collection of fees and centralized billing services for the members. The usage data previously described was also believed to be valuable in the foreseeable future to the charger hosts, utilities and governments for planning purposes.

With respect to EV drivers, the Blink Network allowed consumers the freedom to travel wherever they choose and to charge their EVs at conveniently located commercial locations. Utilizing the Blink Network, EV drivers were able to easily identify charging stations and then pay for such charging services through a variety of methods, including smart phone applications, radio-frequency identification (RFID) cards, and other mobile phone and credit card-based options. EV drivers were able to further take advantage of the Blink Network by becoming a member of the Blink Network. Members of the Blink Network had access to discounted charging rates, reservation systems and enhanced Blink Network capabilities.

## **2. Minit-Charger**

The Debtors' Minit-Charger business line offered fast-charging systems for off-road industrial applications, including material handling operations and airport ground support equipment ("GSE"). The Minit-Charger was a patented advanced algorithm technology that provided a lighter, compact and cost-effective fast charging system for GSEs and material handling operations. The Minit-Charger was capable of charging batteries four to six times faster than conventional chargers and enabled battery life that was equal to or longer than traditional charging methods.

Similar to the Blink product line, Minit-Chargers also included advanced data collection capabilities, including the patented Minit-Trak fleet and system data management system. This system provided operators with comprehensive performance evaluation of a battery's state-of-health and state of-charge, and automatically adjusted charging rates to increase and maximize battery life.

## **3. eTec Labs**

The Debtors' eTec Labs business was a trusted research and testing resource for governments, automotive OEMs and utilities. This business segment had standing contractual relationships as a test contractor and consulting engineer for projects with the DOE, several national research laboratories, national energy storage consortiums and large electric utilities. Through these contracts eTec Labs provided services in energy storage, monitoring, systems design and fabrication, product and vehicle testing, and product development.

More specifically, since 1998, eTec Labs was the testing partner for the DOE's Advanced Vehicle Testing Activity ("AVTA") program under a grant for vehicle and associated fueling infrastructure, which provides baseline vehicle performance testing and battery analysis. In connection with AVTA, the Debtors purchased vehicles from local bidders through a bidding process (subject to reimbursement from the DOE and other conditions related to disposal of these vehicles at the end of testing), and then subjected such vehicles to rigorous performance testing analysis. Prior to the Petition Date, eTec Labs conducted more than twelve million test miles for more than 1,250 advanced vehicles under the AVTA program.

Utilizing their extensive EV experience, the Debtors' eTec Labs business line also developed what is known as an EV Micro-Climate Planning Process (the "Climate Process"). The Climate Process was a detailed planning and consulting program that was designed for municipal planning organizations and utilities to provide a deployment blueprint and action plan for a comprehensive EV charging infrastructure in a given area. The implementation of the Climate Process included physical charge infrastructure installations at residential, commercial and public locations, as well as comprehensive review of regulatory issues, public awareness and marketing programs to support the various value chains associated with the Climate Process. The Climate Process was undertaken and refined in markets covered by the EV Project, as well as certain domestic and international markets not covered. In addition, the Climate Process was implemented with respect to many major utilities, which included BC Hydro in British Columbia.

#### **4. Miscellaneous Business Lines**

In addition to their core business lines, the Debtors and certain affiliated non-Debtor entities operated several smaller businesses. Debtor ECotality Stores, Inc., which did business as Fuel Cell Store, operated a virtual store selling hydrogen fuel cell equipment for educational and recreational purposes. Stores had an online presence only and did not have any employees or physical operations. In addition, non-Debtor affiliate Portable Energy de Mexico, S.A. De C.V. ("Portable Energy"), a company organized under the laws of Mexico, provided manufacturing and assembly services or a type of battery required for certain supercomputers. Portable Energy had operations in Tijuana, Mexico. Debtor ECotality, Inc. was Portable Energy's sole customer.

#### **5. The EV Project**

On September 30, 2009, Debtor Electric Transportation Engineering Corp. entered into the DOE EV Project Contract, which was a cost-reimbursable contract with the DOE to support, manage and lead the EV Project. The EV Project, which, at the time, was the largest deployment of EV charging infrastructure in United States history, sought to collect data on the use of such infrastructure through the placement of residential and commercial Blink charging stations throughout approximately twenty-one (21) major metropolitan areas in the United States, including Phoenix, Arizona, Los Angeles, California, San Francisco, California, Dallas, Texas, Chicago, Illinois, Philadelphia, Pennsylvania, Atlanta, Georgia and Washington, DC. The EV Project, initially projected to cost approximately \$218.7 million, commenced in October 2009, and was previously scheduled to conclude in April 2013.

Under the DOE EV Project Contract, Debtor Electric Transportation Engineering Corporation was awarded a cost-share grant of approximately \$99.8 million, of which \$13.4 million was sub-funded to two (2) state and federal research and development centers. The DOE EV Project Contract was subsequently extended to award Debtor Electric Transportation Engineering Corp. an additional \$15 million in cost-share money. Under the terms of the DOE EV Project Contract, the DOE agreed to reimburse 45.8% of total EV Project costs incurred by Debtor Electric Transportation Engineering Corp., up to a total amount equal to \$100.2 million. As of December 31, 2012, Debtor Electric Transportation Engineering Corp. had received \$84.8 million in reimbursements from the DOE.

### **B. Summary of the Debtors' Prepetition Debts and Other Significant Liabilities**

Notably, the Debtors have no significant secured debt obligations and no liens on cash collateral. Instead, the Debtors' significant prepetition liabilities are composed of an unsecured convertible note, certain capital lease obligations and other long-term secured debt. Each of these liabilities is summarized below:

#### **1. Convertible Note**

On March 13, 2012, the Debtors received \$5 million in cash in exchange for a convertible note (the "Convertible Note") payable to ABB Technology Ventures Ltd ("ABBTV"). In connection with the issuance of the Convertible Note, Debtor ECotality decreased the exercise price of certain previously existing warrants held by ABBTV. The Convertible Note bears interest at a rate of 5.05% per annum, which is payable quarterly in arrears, and matures on March 13, 2015. The Convertible Note also is convertible into 3,937,007 shares of ECotality's common stock at a per share conversion price equal to \$1.27 per share.

## **2. Capital Lease Obligations and Other Long Term Debt**

**Building Note:** On January 16, 2007, ECotality purchased an office building in Arizona for an aggregate price of \$575,500. One-half of the aggregate price, or \$288,000, was paid in cash and the remaining balance of \$287,500 was structured as an interest-only loan (the "Building Note"). The loan carried an annual interest rate of 6.75%, with monthly interest-only payments due beginning on February 16, 2007. On January 20, 2012, ECotality entered into an agreement to modify the terms of the Building Note. In connection with the terms of the loan modification, ECotality paid \$100,000 as a principal reduction of the Building Note. The remaining balance of \$187,500 was structured as an interest-only loan, bearing interest at 7.0% per annum, with monthly payments in the amount of \$1,100, beginning on February 16, 2012. The entire outstanding \$187,500 principal balance was due on January 16, 2014 (the "Interim Maturity Date"); provided, however, if ECotality did not default on any interest payments due in the period up to the Interim Maturity Date, then the Interim Maturity Date shall automatically extend until January 16, 2016. ECotality has the right to pay the principal balance early without penalty, and the Building Note is secured by a deed of trust on the office building. Ownership of this office building is currently subject to dispute between the Debtors and Blink Acquisition, LLC ("Blink Acquisition").

**Cisco Equipment Lease:** ECotality also entered into a Master Lease Agreement with Cisco Systems Capital Corporation (the "Cisco Equipment Lease") for equipment with an original retail price of \$314,000. The terms of the Cisco Equipment Lease provided for monthly payments, beginning on December 1, 2011, of principal and interest at a rate of 5.4% per annum. The Debtors have rejected the Cisco Equipment Lease.

**Operating Leases:** ECotality leased certain other equipment and facilities from various third parties (the "Operating Leases"). These leases are all set to expire before October 2014; however, certain of these leases may be extended by the Debtors on a month-to-month basis. Through the first three months of 2013, the Debtors estimate that facilities-related lease payments totaled approximately \$277,000. The Debtors have rejected the Operating Leases.

## **V. EVENTS LEADING TO THE CHAPTER 11 CASES**

### **A. Events Leading to the Commencement of the Chapter 11 Cases**

The Chapter 11 Cases were not the result of an "overleveraged" balance sheet, a single adverse event or a long-term decline in revenues. Rather, the Debtors' entry into chapter 11 can best be described as the result of a confluence of several adverse events occurring during the first and second quarters of 2013, which significantly impacted the Debtors' liquidity situation. The Debtors likely could have sustained operations in the face of these events individually, at least for some time, but, as described herein, the combined effect, and relative timing, of these events effectively left them with no choice but to file these Chapter 11 Cases and seek to sell their assets pursuant to Bankruptcy Court-approved procedures.

Among other things, six factors precipitated the Debtors' decision to file these Chapter 11 Cases. These factors included: (i) the Debtors' failure to attain sales volumes of their commercial Electric Vehicle Service Equipment ("EVSE") sufficient to support their operations; (ii) the Debtors' inability to release a scheduled new product offering in their Minit-Charger industrial line; (iii) the Debtors' inability to obtain additional financing that would allow them to finance their operations; (iv) the DOE's suspension of payments to the Debtors in connection with the EV Project; (v) the significant expenses and liquidated damages incurred by the Debtors in connection with a settlement with the United States Department of Labor ("DOL"); and (vi) uncertainty regarding the resolution of a phenomenon occurring in some of the Debtors' previously installed EVSEs.

### **1. Failure to Meet Sales Projections**

The Debtors failed to attain sales volumes of their commercial EVSEs sufficient to support the Debtors' operations in the second half of 2013. As cash flows from the EV Project declined, it was essential that the Debtors transition from subsidized installations of EVSEs under the EV Project to regular commercial sales and installations. To this end, the Debtors reorganized their sales organization to support such efforts. In addition to selling their products directly through their sales force, the Debtors formed commercial relationships with independent dealers for the purpose of distribution of their EVSEs and related products in the first half of 2013 with the expectation of selling substantial volumes of EVSE products in the second half of 2013. Neither the Debtors' direct sales force nor

the independent dealers generated sales volumes of their commercial EVSE products sufficient, in combination with other sources of revenue, to support the Debtors' operations in the second half of 2013.

## **2. Failure to Release a New Minit-Charger Product**

The Debtors were unable to release a scheduled new product offering in their MinitCharger industrial line. Their industrial product line expansion with the Minit Charger 12 product, which was scheduled to launch at the end of 2013, was critical to the Debtors' growth. However, because the Minit Charger 12 product exhibited unacceptable performance shortfalls during prototype verification testing, such product was not introduced in 2013. Accordingly, there were no revenues from the product in 2013.

## **3. Inability to Obtain Sufficient Prepetition Capital**

The Debtors were unable to obtain additional financing. Net working capital is an important measure of the Debtors' ability to finance their operations. As the Debtors focused on their business plan for strong growth of their commercial businesses, they were cognizant that fully executing on their plan would require the Debtors to raise additional capital to supplement their cash flows from operations. Management actively pursued a number of options to secure additional capital. However, the Debtors learned on August 8, 2013, that financing that was being pursued from an existing investor would not be forthcoming.

## **4. Suspension of Funds from the DOE**

In an abundance of caution on August 8, 2013, the Debtors notified the DOE that, even though the Debtors continued to aggressively pursue certain options for additional financing and was exploring other alternatives, in the event additional financing was not obtained, the Debtors may not be able to fulfill their operational obligations, including under the EV Project. In response, the DOE sent a letter to the Debtors stating that it was suspending all payments under the EV Project while it investigated the situation and determined whether the award should continue. This suspension had a significant impact on receivables that were anticipated to be collected from the DOE, in addition to remaining amounts anticipated to be invoiced and collected under the EV Project.

In the August 8, 2013 letter, the DOE also notified the Debtors that the Debtors were not authorized to incur any new cost or obligation under the award and that the DOE would not reimburse the Debtors for such costs during the suspension. Further, the DOE instructed the Debtors to provide notices to their vendors and subcontractors of the suspension.

## **5. DOL Settlement**

In addition to the foregoing, the Debtors also incurred significant expenses and liquidated damages in connection with the previously disclosed (in public filings) DOL investigation (the "DOL Investigation") under the Fair Labor Standards Act and the Davis Bacon Act. The Debtors agreed to pay certain employees and contractors identified by the Debtors and the DOL back wages and liquidated damages in an aggregate amount of approximately \$855,000 in consideration for a release of the Debtors by such employees and contractors of any and all liability with respect to any wage related matters. Accordingly, the Debtors revised its March 31, 2013 accrual of \$597,000 to reflect the approximately \$855,000 expected to be paid, in addition to approximately \$89,000 in estimated payroll taxes, for a total accrual of \$943,000 as of June 30, 2013, resulting in an additional approximately \$346,000 charge to general and administrative expenses in the second quarter of 2013.

## **6. Uncertainty Regarding Existing Products**

The Debtors also faced some uncertainty regarding the resolution of a phenomenon occurring in some of the Debtors' previously installed EVSEs, which caused overheating, and in certain rare cases melting, of the connector plug that connects the EVSE to the EV when charging. The Debtors, along with certain automotive OEMs and equipment suppliers, actively evaluated the issue in an attempt to determine the cause and to address the problem.

## **7. Engagement of a Restructuring Advisor**

In connection with the events disclosed above, the Debtors' Board of Directors (the "Board") retained FTI Consulting, Inc. ("FTI"), as financial advisor, reporting directly to the Board. FTI's primary responsibilities included: (a) evaluating capital structure alternatives and identify additional sources of financing; (b) executing profitability improvement alternatives; (c) undertaking cost cutting measures; (d) developing and executing plans to improve liquidity against existing assets; (e) identifying ongoing personnel requirements and appropriate retention or incentive plans; and (f) facilitating the sale of the Debtors or their assets.

## **VI. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES**

### **A. First Day Pleadings and Other Core Matters<sup>4</sup>**

#### **1. First and Second Day Pleadings**

To facilitate the administration of the Chapter 11 Cases and minimize disruption to the Debtors' operations and sale process, the Debtors filed certain motions and applications with the Bankruptcy Court on September 16, 2013 (the "Petition Date"), or shortly thereafter, seeking certain relief summarized below. The relief sought in the "first day" and "second day" pleadings facilitated the Debtors' seamless transition into chapter 11 and aided in the preservation of the value of the Debtors' assets as they sought to sell substantially all of their assets pursuant to Bankruptcy Court-approved procedures. Orders granting the relief requested in the first and second day pleadings included the following:

##### **(a) Post-Petition Financing**

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 53] authorizing the Debtors to obtain secured, superpriority postpetition financing (the "DIP Financing") from Nissan North America, Inc. ("Nissan") in a maximum principal amount of \$1,250,000. Under the terms of this interim order and the associated credit agreement, the funds were released to the Debtors at predetermined intervals in predetermined amounts, with \$500,000 being released on the closing date and \$250,000 being released on each of September 25, 2013, September 30, 2013, and October 7, 2013. Consistent with the terms of the underlying credit agreement, the funds were used to (i) fund the Debtors' operations until a sale of substantially all of their assets could be completed, (ii) fund certain of the Debtors' operating subsidiaries, and (iii) pay administrative costs necessary to maintain the corporate existence of the guarantors of the financing. Importantly, the interim financing order also resolved the DOE's purported interests in the Debtors' assets. On October 3, 2013, the Bankruptcy Court entered a final order [Docket No. 128] approving the DIP Financing on a final basis. The DIP Financing was repaid to Nissan with a portion of the proceeds of the Sales (as defined below) and cash on hand as of the time of the entry of the Sale Orders (as defined below).

##### **(b) Cash Management**

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 68] authorizing, but not directing, the Debtors to continue using their existing cash management system, existing bank accounts, and existing business forms. In addition, this interim order authorized the Debtors to continue intercompany transactions in the ordinary course of business and accorded all such transactions administrative expense status under Bankruptcy Code section 503(b). On October 3, 2013, the Bankruptcy Court entered a final order [Docket No. 129] granting all such relief on a final basis.

##### **(c) Employee Wages and Benefits**

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 70] (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, and other compensation and benefits and (ii) continue employee benefit programs in the ordinary course including, among others, medical, dental and 401(k)

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<sup>4</sup> The descriptions of the various motions, applications and other pleadings provided herein is for informational purposes only and qualified in their entirety by reference to the various motions, applications and other pleadings filed in the Chapter 11 Cases.



benefits; and (b) authorizing and directing applicable banks and financial institutions to honor and process related checks and transfers. Payments made pursuant to this interim order were not to exceed \$62,000 during the first twenty-one (21) days of the Chapter 11 Cases. On October 3, 2013, the Bankruptcy Court entered a final order [Docket No. 132] granting the relief on a final basis, but directing that payments to individual employees shall not exceed the statutory cap of \$12,425 per employee.

(d) Taxes and Fees

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 72] authorizing, but not directing, the Debtors to pay certain prepetition sales, use, property, and other taxes and fees in the ordinary course of business. Payments made pursuant to this interim order during the first twenty-one (21) days of the Chapter 11 Cases were not to exceed \$200,000. On October 3, 2013, the Bankruptcy Court entered a final order [Docket No. 131] granting the relief on a final basis.

(e) Insurance

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 73] authorizing, but not directing, the Debtors to pay or honor obligations owed on account of their prepetition insurance policies in the ordinary course of business, as and when due, without regard to whether such obligations accrued or arose before the Petition Date. This interim order provided further that payments made thereunder on account of prepetition amounts due during the first twenty-one (21) days of the Chapter 11 Cases were not to exceed \$40,000. On October 3, 2013, the Bankruptcy Court entered a final order [Docket No. 130] approving the relief requested in the underlying motion and otherwise authorizing the Debtors to (i) continue to maintain and perform under their prepetition insurance policies and premium financing agreements, (ii) pay or honor prepetition amounts due, (iii) revise, extend, renew or supplement prepetition insurance coverage and premium financing agreements as necessary, and (iv) continue using the services of an insurance broker.<sup>5</sup>

(f) Utilities

On September 19, 2013, the Bankruptcy Court entered an interim order [Docket No. 71] (i) determining adequate assurance of future payment for utility services, and (ii) establishing procedures by which utility providers may seek additional adequate assurance of payment. Pursuant to this interim order, the Debtors deposited \$124,000 in a segregated account as adequate assurance to utility providers that did not already hold a deposit equal to or greater than the most recent two (2) week average of service costs. On October 10, 2013, the Bankruptcy Court entered a final order [Docket No. 209] granting the relief on a final basis.

(g) Warranty Programs

On September 19, 2013, the Bankruptcy Court entered a final order [Docket No. 69] authorizing the Debtors, in their discretion, to continue, renew, replace, implement, modify and/or terminate certain warranty programs applicable to certain EV chargers they sold in the ordinary course of business. This order further authorized, but did not direct, the Debtors to honor all prepetition and postpetition obligations relating to these warranty programs.

## **2. Procedural and Administrative Motions**

To facilitate the efficient administration of the Chapter 11 Cases and to reduce the administrative burden associated therewith, the Debtors also sought and received approval of procedural and administrative motions that:

- authorized the joint administration of the Chapter 11 Cases [Docket No. 27];

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<sup>5</sup> By separate motion, the Debtors also requested and received authority to purchase replacement directors' and officers' liability and employment practices liability insurance coverage [Docket No. 207]. The Bankruptcy Court also entered an order authorizing the Debtors' insurers to continue performing under the applicable directors' and officers' liability policies [Docket No. 362].

- allowed the Debtors to prepare a single list of Creditors in lieu of submitting a formatted mailing matrix for each of the Debtors and to file a consolidated list of the Debtors' thirty (30) largest Creditors [Docket No. 74];
- allowed the Debtors to retain and compensate certain professionals utilized in the ordinary course of business [Docket Nos. 106 and 231]; and
- approved the procedures for interim compensation and reimbursement of retain professionals in the Chapter 11 Cases [Docket No. 337].

### **3. Retention of Professionals**

The Debtors also filed several applications and obtained authority to retain various Professionals to assist the Debtors in carrying out their duties during the Chapter 11 Cases. These Professionals include: (a) Akin Gump Strauss Hauer & Feld LLP, as lead counsel to the Debtors [Docket No. 95]; (b) Parker Schwartz, PLLC, as co-counsel to the Debtors [Docket No. 36]; (c) FTI Consulting, Inc., as crisis manager and financial advisor to the Debtors [Docket No. 205]; and (d) Kurtzman Carson Consultants LLC as claims, noticing and solicitation agent for the Debtors [Docket No. 75].

### **4. Appointment of Committee**

On September 24, 2013, Ilene J. Lashinsky, the United States Trustee appointed a statutory committee of unsecured Creditors pursuant to Bankruptcy Code section 1102. The United States Trustee appointed the Board of Regents of the University of Nebraska, Saturn Electric Inc., Hannah Solar, LLC, Kortman Electric Inc., and GMA Manufacturing LLC to the Committee [Docket No. 86]. On October 8, 2013, by order of the Bankruptcy Court, the Committee was authorized to retain Jennings, Strouss & Salmon P.L.C. as counsel to the Committee, *nunc pro tunc* to September 26, 2013. Effective June 4, 2014, by order of the Bankruptcy Court, the Committee retained and employed Dickinson Wright PLLC to represent it as counsel in the Chapter 11 Cases [Docket No. 598].

### **5. Schedules and Statements**

On or about October 1, 2013, each of the Debtors filed their respective Schedules with the Bankruptcy Court pursuant to Bankruptcy Code section 521. The Schedules were filed within the fourteen (14) day period proscribed by Bankruptcy Rule 1007. Notably, the Debtors did not seek an extension of that deadline as is typical in cases of this size and complexity. The United States Trustee held a statutory meeting of Creditors pursuant to Bankruptcy Code section 341(a) (the "341 Meeting") on October 22, 2013. Among other things, the United States Trustee interviewed the Debtors' representative at the 341 Meeting concerning the Schedules.

### **6. Bar Date**

On December 4, 2013, the Bankruptcy Court entered an order [Docket No. 364] setting (a) January 15, 2014 at 4:00 p.m. (prevailing Arizona time) as the deadline for all non-governmental units (as defined in Bankruptcy Code section 101(27)) to file Claims in the Chapter 11 Cases; (b) March 14, 2014 at 4:00 p.m. (prevailing Arizona time) as the deadline for all governmental units (as defined in Bankruptcy Code section 101(27) and with the exception of the DOE, which had an April 14, 2014 deadline to file any General Unsecured Claims of the type described in the Sale Orders (as defined below)); (c) procedures for filing proofs of claim; and (d) the form and manner of notice of the applicable bar dates (the "Bar Date Order"). The Debtors are currently reviewing Claims that have been filed in response to the Bar Date Order, and will file objections to filed and scheduled Claims with the Bankruptcy Court as necessary and appropriate in compliance with the Bankruptcy Code, Bankruptcy Rules and the terms of the Debtors' proposed Plan, if confirmed.

Because the resolution process for the Claims is currently ongoing with respect to both scheduled and filed Claims, the Claim amounts identified in this Disclosure Statement are estimates and, in particular, the recoveries for holders of Allowed General Unsecured Claims could be materially lower if such Claims are higher than current estimates.

## **B. Sale of Substantially All of the Debtors' Assets**

### **1. Auction and Sale Process**

Upon commencing their Chapter 11 Cases, the Debtors' primary goal was to effectuate a sale of substantially all of their assets. To that end, on September 17, 2013, the Debtors filed a motion [Docket No. 11] seeking, among other things, entry of an order (the "Bid Procedures Order") approving procedures for (a) submitting bids for the purchase of substantially all of their assets,<sup>6</sup> and (b) conducting an auction for substantially all of the their assets (the "Auction"). On September 19, 2013, the Bankruptcy Court entered the Bid Procedures Order [Docket No. 56].

Consistent with the requirements of the Bid Procedures Order, on October 8, 2013, the Debtors conducted the Auction and ultimately determined, in their business judgment and in consultation with Committee, that a combination of three separate bids submitted for each of the Debtors' three main business lines constituted the highest and best offer for their principal business assets (collectively, the "Successful Bids"). The Successful Bids represented total aggregate cash consideration of \$4,335,000, composed of the following: (a) a bid from Intertek Testing Services NA, Inc. ("Intertek") of \$750,000 for the eTec Labs business line; (b) a bid from Access Control Group, L.L.C. ("Access Control") of \$250,000 for the Minit-Charger business line; and (c) a bid of \$3,335,000 from Blink Acquisition for the Blink Network business line.<sup>7</sup>

The Debtors presented the Successful Bids to the Bankruptcy Court at a hearing held on October 9, 2013 (the "Sale Hearing"). At the Sale Hearing, the Bankruptcy Court approved the Successful Bids and indicated that it would enter separate orders approving the sales to Intertek, Access Control and Blink Acquisition. On October 11, 2013, the Bankruptcy Court entered orders [Docket Nos. 213, 214, and 215] (collectively, the "Sale Orders"), among other things, approving each of the three sales free and clear of all liens, claims, encumbrances, and interests (collectively, the "Sales"). The Sales to Intertek and Access Control closed on October 11, 2013, and the Sale to Blink Acquisition closed on October 16, 2013.

### **2. Subsequent Transition Efforts**

After the Sales to Blink Acquisition, Intertek and Access Control successfully closed, the Debtors assisted the respective purchasers with the transition process. This included, among other things, shifting many of the Debtors' employees to the purchasers of the Debtors' assets, assuming and assigning various executory contracts and unexpired leases to the respective purchasers, speaking with vendors and other third parties to explain the transition process, and rejecting executory contracts and unexpired leases that were not assumed and assigned and were no longer of any material benefit to the Estates.

### **3. Executory Contracts and Unexpired Leases**

Pursuant to procedures set forth in the various Sale Orders, the Debtors filed motions and the Bankruptcy Court entered orders assuming and assigning or rejecting over 850 executory contracts and unexpired leases.

## **C. Other Motions and Important Events**

### **1. Wind Down of Mexican Subsidiary**

On December 11, 2013, the Bankruptcy Court entered an order [Docket No. 386] authorizing the Debtors to use up to \$90,000 of Estate resources to wind down Portable Energy, a non-Debtor subsidiary of the Debtors organized under the laws of Mexico, that was engaged in the manufacture and assembly of a type of battery used in certain supercomputers. Pursuant to this authority, the Debtors have wound down the operations of Portable Energy.

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<sup>6</sup> Certain assets, including, among others, chapter 5 avoidance actions, were not sold through the sale process and, as set forth below, remain in the Estates for further administration by the Debtors and the Liquidating Trust, as applicable.

<sup>7</sup> In addition to the cash consideration included in the Successful Bids, under the relevant sale and purchase agreements, each of Intertek, Access Control and Blink Acquisition agreed to pay all amounts necessary to cure monetary defaults under any agreement that each party, respectively, elected to have assumed and assigned to it in connection with the Sales.

## **2. Additional Asset Dispositions**

The Debtors also requested that the Bankruptcy Court approve certain procedures for the sale and/or abandonment of their remaining *de minimis* assets [Docket No. 265]. However, due to opposition from Blink Acquisition, the Bankruptcy Court only entered a limited, interim order [Docket No. 322] that authorized the Debtors to sell certain *de minimis* assets associated with their Fuel Cell Store business (the “Fuel Cell Assets”). Pursuant to this interim order and the authority granted therein, the Fuel Cell Assets were sold for \$55,000 to Trygve Enterprises, LLC [Docket No. 325].

In addition to the disposition of the Fuel Cell Assets, the Debtors requested and received authority from the Bankruptcy Court to effectuate a trade of certain low-carbon fuel credits issued by the State of California (the “LCFS Credits”) through a third-party broker. Specifically, on November 7, 2013, the Bankruptcy Court entered an order [Docket No. 294] authorizing, but not directing, the Debtors to (i) dispose of the LCFS Credits, and (ii) perform all of their obligations in connection therewith, including payment of the fee owed to the third-party broker that completed the trade. The sale of the LCFS Credits closed on or around February 28, 2014, and resulted in net proceeds to the Estates of \$207,543.60.

## **3. Settlement of Nissan’s Fees and Expenses Arising From the DIP Financing**

On or around April 28, 2014, the Debtors sought Bankruptcy Court approval of and authority to enter into that certain Settlement Agreement and Release, dated April 28, 2014, by and between Nissan, the Debtors and the Committee (the “Nissan Settlement Agreement”), as a compromise of the disputed fees and expenses (the “Fee Dispute”) of Nissan and its professionals and advisors owed by the Debtors to Nissan in connection with the DIP Financing, as discussed in Section VI.A.1(a) [Docket No. 540]. Pursuant to the Nissan Settlement Agreement, Nissan agreed to pay the sum of \$45,000 to the Debtors for the benefit of their estates in exchange for mutual releases of claims arising from the DIP Financing and the Fee Dispute. The Nissan Settlement Agreement was intended to compromise and fully resolve all issues, disputes, liabilities and claims existing between Nissan, the Debtors and the Committee, arising from or related to the DIP Financing and the Fee Dispute. On May 28, 2014, the Bankruptcy Court entered an order authorizing the Debtors to enter into the Nissan Settlement Agreement [Docket No. 581].

## **4. Remaining Assets**

In addition to cash on hand of approximately \$1.5 million, the Debtors’ assets consist primarily of, among others, Causes of Action (as set forth in Section 9.5 of the Plan), insurance policies, certain other *de minimis* assets, as well as the proceeds related to the sale of property located at 6821 E. Thomas Rd., Scottsdale, Arizona (the “Scottsdale House”) (collectively, the “Remaining Assets”). With regard to the Scottsdale House, Blink Acquisition currently contends that, pursuant to the Sales, ownership of the Scottsdale House was transferred from the Debtors to Blink Acquisition. The Debtors vigorously dispute this contention and will continue their efforts to monetize the Scottsdale House for the benefit of all Creditors; however, at this time, the issue of ownership of the Scottsdale House has not been resolved. In addition, the Debtors believe that, pursuant to the Sales, Blink Acquisition is responsible for certain of the Debtors’ contractual obligations, as well as certain wages related to employees that were considered for employment with Blink Acquisition, and the Debtors may have certain payment obligations to Blink Acquisition. The Debtors are in the process of reconciling these amounts and believe that their cash on hand may increase or decrease as a result of such reconciliation.

The Debtors also estimate that the costs of administering the Chapter 11 Cases from the date hereof to the Effective Date could be as high as \$375,000; provided, however, that such estimate is subject to significant change if, among other things, the Plan is contested.

## **5. Analysis of Alternative Plan Structures**

Since the closing of the various Sales in mid-October, the Debtors and their advisors have spent a substantial amount of time evaluating different plan structures to determine the best vehicle for maximizing creditor recoveries. Active discussions with the Committee and other parties in interest, including Blink Acquisition, led the Debtors and their professional advisors to engage in a comprehensive analysis of the Debtors’ tax attributes, which analysis also required seeking outside tax specialists to evaluate the feasibility of a contemplated reorganization

structure. After weighing the relative advantages and disadvantages of developing and soliciting votes on a plan of reorganization as compared to a plan of liquidation, the Debtors believe, including through consultation with the Committee, that a plan of liquidation will best maximize the value of the Debtors' estates for the benefit of creditors. This view is informed by, among other things, (a) the lack of reliable projections for the reorganized entity that would suggest that a tax driven plan of reorganization would provide a tangible net benefit to creditors, (b) inadequate protections for recoveries of creditors in the proposals advanced by Blink Acquisition, the proposed plan sponsor under a tax driven plan of reorganization, (c) the additional time and costs associated with negotiating a tax driven plan of reorganization as proposed by Blink Acquisition and (d) the execution risk associated with any such tax driven plan of reorganization.

## **VII. SUMMARY OF THE PLAN<sup>8</sup>**

A copy of the Plan accompanies the Disclosure Statement as **Exhibit A**. The following summary of the material provisions of the Plan is qualified in its entirety by the specific provisions of the Plan, including the Plan's definitions of certain terms used below. The following is intended to provide a general description of the Plan. For more specific information, please refer to the attached Plan. Please note that the Debtors have attempted to minimize the use of defined terms in describing the Plan. However, any capitalized terms that are not defined in this section of the Disclosure Statement are defined in the Plan. It is recommended that one refer to those definitions when reading this document.

### **A. Brief Explanation of the Plan**

The Debtors will be liquidated pursuant to the proposed Plan. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate in an orderly fashion its business for the benefit of itself and its creditors and equity holders. Confirmation of a plan is the principal objective of a chapter 11 case.

In general, a chapter 11 plan (1) divides claims into separate classes; (2) specifies the property that each class is to receive under the plan; and (3) contains other provisions necessary to the reorganization or liquidation of the debtor.

A chapter 11 plan may provide that certain classes of claims are either (1) to be paid in full upon the effective date of the plan; (2) reinstated; or (3) their legal, equitable and contractual rights are to remain unchanged by the reorganization or liquidation effectuated by the plan. These classes are referred to under the Bankruptcy Code as not impaired, and, because of such favorable treatment, are deemed to accept the plan. Accordingly, it is not necessary to solicit votes from the holders of claims in such not impaired classes. A chapter 11 plan may also provide that certain classes will not receive any distributions of property. Such classes are deemed to reject the plan.

All other classes of claims contain impaired claims. An impaired class is generally a class that will receive something less than their claims under a plan of reorganization or liquidation. Before a plan can be confirmed by a bankruptcy court, the Bankruptcy Code generally requires that each impaired class of claims votes to accept a plan. Acceptances must be received from the holders of claims in each impaired class of claims that have voted on the plan. However, even if an impaired class rejects (or is deemed to reject) the plan, a bankruptcy court may confirm the plan if certain minimum treatment standards are met with respect to such class or classes.

The Bankruptcy Code does not require each holder of a claim to vote in favor of a plan in order for the bankruptcy court to confirm the plan. However, the bankruptcy court must find that the plan meets a number of tests (other than the voting requirements described in this section) before it may confirm or approve the plan of reorganization or liquidation. Many of these tests are designed to protect the interests of holders of claims who do

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<sup>8</sup> This Section VII is intended only to provide a summary of the key terms, structure, classification, treatment and implementation of the Plan, and is qualified in its entirety by reference to the entire Plan and exhibits thereto. Although the statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein, this Disclosure Statement does not purport to be a precise or complete statement of all such terms and provisions, and should not be relied on for a comprehensive discussion of the Plan. Instead, reference is made to the Plan and all such documents for the full and complete statement of such terms and provisions. The Plan itself (including attachments) will control the treatment of Claims and Equity Interests under the Plan. To the extent there are any inconsistencies between this Section VII and the Plan (including attachments), the latter shall govern.

not vote to accept the plan, but who will nonetheless be bound by the plan's provisions if it is confirmed by the bankruptcy court.

## **B. Treatment of Unclassified Claims**

### **1. Administrative Claims.**

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors or the Liquidating Trustee, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim will receive, in full and final satisfaction of its Allowed Administrative Claim, Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim either: (a) if such Allowed Administrative Claim is allowed as of the Effective Date, no later than forty-five (45) days after the Effective Date or as soon as reasonably practicable thereafter; (b) if the Claim is not Allowed as of the Effective Date, no later than forty-five (45) days after the date on which an order of the Bankruptcy Court allowing such Claim becomes a Final Order, or as soon thereafter as reasonably practicable thereafter; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Estates in the ordinary course of their business after the Petition Date, pursuant to the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the holder of such Allowed Administrative Claim.

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the OCP Order) or as provided herein, unless previously filed, requests for payment of Allowed Administrative Claims must be filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Allowed Administrative Claims that are required to file and serve a request for payment of such Allowed Administrative Claims that do not file and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Claims against the Debtors or their property, and such Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party by the Administrative Claims Objection Bar Date.

### **2. Compensation Claims.**

Notwithstanding any other provision of the Plan concerning Administrative Claims, any Professional seeking an award by the Bankruptcy Court of an Allowed Administrative Claim on account of Compensation Claims (a) shall no later than sixty (60) days after the Effective Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Confirmation Date and (b) shall receive, as soon as reasonably practicable after such Claim is allowed, in full settlement, satisfaction, and release of, and in exchange for, such Allowed Administrative Claim, Cash in an amount equal to the unpaid amount of such Allowed Compensation Claim in accordance with any Final Order allowing such Allowed Compensation Claim.

#### **(a) Post-Confirmation Date Fees and Expenses**

Except as otherwise specifically provided in the Plan, on and after the Confirmation Date, the Debtors or the Liquidating Trustee, as applicable, shall, in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court, pay in Cash the reasonable fees and expenses incurred by Professionals on or after the Confirmation Date. Upon the Confirmation Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 and 1103 or the Interim Compensation Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors or the Liquidating Trustee, as applicable, may pay any Professional in the ordinary course of business without any further notice, action, order or approval of the Bankruptcy Court.

### **3. Substantial Contribution Compensation and Expenses.**

Except as otherwise specifically provided in the Plan, any Person or Entity that requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b)(3), (4) or (5) must file an application and serve such application on counsel for the Debtors or the

Liquidating Trustee, as applicable, and as otherwise required by the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules on or before the Administrative Claim Bar Date, or be forever barred from seeking such compensation or expense reimbursement. All rights of the Debtors, the Liquidating Trustee, the United States Trustee and all other parties in interest to object to such request are expressly reserved.

#### **4. Priority Tax Claims.**

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in Bankruptcy Code section 1129(a)(9)(C).

#### **C. Classification and Treatment of Claims and Equity Interests**

The Plan provides for the substantive consolidation of the Estates into a single Estate. As a result of the substantive consolidation of the Estates, each Class of Claims against and Equity Interests in the Debtors will be treated as against a single consolidated Estate without regard to the corporate separateness of the Debtors.

Pursuant to Bankruptcy Code sections 1122 and 1123, the following table summarizes the Classes of Claims and Equity Interests under the Plan. A Claim or Equity Interest is in a particular Class for purposes of voting on, and of receiving distributions pursuant to, the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and such Claim or Equity Interest has not been paid, released or otherwise settled prior to the Effective Date. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class.

<b>SUMMARY OF PLAN TREATMENT AND EXPECTED RECOVERIES</b>			
<b>Class</b>	<b>Designation</b>	<b>Plan Treatment</b>	<b>Estimated Recovery Under the Plan</b>
Class 1	Secured Claims	Except to the extent that a holder of an Allowed Secured Claim agrees to a less favorable treatment of its Allowed Secured Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed Secured Claim, each such holder thereof shall receive, at the option of the Debtors or the Liquidating Trustee, as applicable, either: (i) payment in full in cash of such holder's Allowed Secured Claim; (ii) reinstatement of such holder's Allowed Secured Claim; (iii) return of any collateral subject to such holder's Allowed Secured Claim; or (iv) such other treatment rendering such holder's Allowed Secured Claim Unimpaired.	100%
Class 2	Priority Non-Tax Claims	Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment of its Allowed Priority Non-Tax Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed Priority Non-Tax Claim, each such holder thereof shall receive, at the option of the Liquidating Trustee, either: (i) payment in full in Cash of such holder's Allowed Priority Non-Tax Claim; or (ii) such other treatment rendering such Allowed Priority Non-Tax Claim Unimpaired.	100%

SUMMARY OF PLAN TREATMENT AND EXPECTED RECOVERIES			
Class	Designation	Plan Treatment	Estimated Recovery Under the Plan
Class 3	General Unsecured Claims	Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed General Unsecured Claim, each holder thereof shall receive Cash in an amount equal to the pro rata share of the Unsecured Claims Fund.	Up to 8%  (Subject to material change based on, among other things, claims objections as well as the realization of Causes of Action and other assets)
Class 4	Intercompany Claims	All Intercompany Claims shall be discharged, cancelled, released and extinguished as of the Effective Date without any distribution on account of such Intercompany Claims.	0%
Class 5	Section 510(b) Claims	All Section 510(b) Claims shall be discharged, cancelled, released and extinguished as of the Effective Date without any distribution on account of such Section 510(b) Claims.	0%
Class 6	Equity Interests	All Equity Interests shall be discharged, cancelled, released and extinguished as of the Effective Date without any distribution on account of such Equity Interests.	0%

#### D. Means for Implementation of the Plan

1. **Liquidating Trust.** Distributions to holders of Allowed Claims (including Compensation Claims) contemplated under the Plan shall be funded by the proceeds of Liquidating Trust Assets. After the payment or reservation for, as applicable, the expenses of administering the Liquidating Trust, including the winding down and closing of the Chapter 11 Cases (including with respect to any fees and expenses incurred by any Professionals after the Confirmation Date), the fees and expenses of the Liquidating Trustee and its retained professionals, all Allowed Administrative Claims, Allowed Compensation Claims, Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Priority Non-Tax Claims and appropriate reserves, and any remaining assets shall be used to fund the Unsecured Claims Fund.

(a) **Creation.** On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement, the terms of which shall be incorporated herein by reference. As of the Effective Date, all of the Liquidating Trust Assets, which shall include the Remaining Assets, shall be transferred to the Liquidating Trust, pursuant to the terms of the Liquidating Trust Agreement. The Liquidating Trust shall be established for the sole purpose of liquidating and distributing the Liquidating Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d).

(b) **Dissolution of the Debtors.** As of the Effective Date, and without the need for any further order of the Bankruptcy Court, action, formality or payment of any fees which might otherwise be required under applicable non-bankruptcy laws, the Debtors shall be deemed dissolved without the need for any filings with the secretary of state or other governmental official in each Debtor's respective state of incorporation or organization; provided, however, that notwithstanding the dissolution of the Debtors, the Liquidating Trustee shall be authorized and empowered to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of and consummate the Plan, including, without limitation, the Liquidating Trust Agreement and, to the extent that any Debtor's continued existence is necessary for the realization or liquidation of any asset or defense of any Claim, such Debtor shall be deemed to continue to exist solely for such purpose.



(c) Employment and Compensation of Professionals. In accordance with the Liquidating Trust Agreement and subject to the Liquidating Budget (as defined in the Liquidating Trust Agreement), the Liquidating Trust may employ such counsel (which may include one or more of the same counsel employed by either the Debtors or the Committee), advisors and other professionals (which may include one or more of the same Professionals employed by either the Debtors or the Committee) selected by the Liquidating Trustee that the Liquidating Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court. The Liquidating Trust's professionals shall be compensated at their respective standard hourly rates as agreed to by the Liquidating Trustee, without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of the Liquidating Trust's professionals shall be satisfied out of the Liquidating Trust Assets.

## **2. Liquidating Trustee**

(a) Appointment. The Liquidating Trustee shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing or other order of the Bankruptcy Court. The Debtors hereby recommend that the initial Liquidating Trustee shall be Carolyn Johnsen, which recommendation is acceptable to the Committee. Ms. Johnsen has served as counsel to the Committee and, as a result, is knowledgeable about the Debtors, the Chapter 11 Cases and the Remaining Assets. For further information regarding Ms. Johnsen's qualifications to serve as the Liquidating Trustee, please refer to Exhibit B attached hereto. In the event Ms. Johnsen does not serve as Liquidating Trustee for some reason, the Debtors reserve the right to select a Person or Entity to serve as the Liquidation Trustee, which selection shall be reasonably acceptable to the Committee.

(b) Duties. As more fully described in the Liquidating Trust Agreement, the Liquidating Trustee shall have the responsibility for administering the Liquidating Trust, maintaining applicable reserves, liquidating the Liquidating Trust Assets and making distributions under the Plan.

(c) No Further Approvals Required/Transfer of Liquidating Trust Assets. In performance of its duties hereunder, the Liquidating Trustee shall have the rights and powers of a debtor in possession under Bankruptcy Code section 1107, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of the Plan. On and after the Effective Date, the Liquidating Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of the Plan, including the transfer of any Liquidating Trust Assets retained by the Liquidating Trust, except as explicitly set forth in the Liquidating Trust Agreement. As further set forth in the Liquidating Trust Agreement, without limitation of the foregoing, the Liquidating Trustee shall be authorized pursuant to this Plan to transfer any or all of the Liquidating Trust Assets without necessity of any further notice or approval of the Bankruptcy Court and/or under any applicable state or federal law. This provision shall be subject in its entirety to the Liquidating Trust Agreement.

## **3. Substantive Consolidation.**

The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates into a single consolidated Estate. If the Estates are substantively consolidated, then, immediately upon the Effective Date, all of the Debtors' assets and liabilities shall be consolidated into a single entity. All of the Creditors of each of the Debtors shall become the Creditors of the consolidated entity. Claims shall be paid according the Classification of Claims set forth in Article II of the Plan as if the Claims were Claims against the consolidated entity. Any and all Intercompany Claims shall be extinguished pursuant to the settlement set forth in this Plan. Any Claim against a Debtor arising from a guarantee of a Claim against another consolidated Debtor shall be merged and eliminated. If any Creditor claims an interest in the assets of one of the Debtors due to such indebtedness, such as a security interest or a blanket lien, such Creditor's interest shall extend only to the assets that can be shown to belong to such Debtor.

In the event that the Bankruptcy Court does not order such deemed substantive consolidation of the Debtors, then except as specifically set forth in the Plan (a) nothing in the Plan or the Disclosure Statement shall constitute or be deemed to constitute an admission that one of the Debtors is subject to or liable for any Claim against any other Debtor, (b) Claims against multiple Debtors shall be treated as separate Claims against each applicable Debtor for all purposes (including, without limitation, distributions and voting) and such Claims shall be

administered as provided in the Plan, (c) the Debtors shall not, nor shall they be required to, re-solicit votes with respect to the Plan and (d) the Debtors may seek confirmation of the Plan as if the Plan is a separate Plan for each of the Debtors.

4. **Cancellation of Notes, Instruments and Outstanding Equity Interests.** On the Effective Date, except as otherwise provided for in the Plan or any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, all agreements, stock, instruments, certificates and other documents in respect of the Equity Interests shall be cancelled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released and discharged.

5. **Cancellation of Liens.** On the Effective Date, any Lien securing any Claim shall be deemed released, and the holder of such Claim shall be authorized and directed to release any collateral or other property of any Debtor held by such holder and to take such actions as may be requested by the Debtors or the Liquidating Trustee, as applicable, to evidence the release of such Lien, including the execution, delivery and filing or recording of such releases as may be requested by the Debtors or the Liquidating Trustee, as applicable.

6. **Exemption from Certain Transfer Taxes and Recording Fees.** To the fullest extent permitted by Bankruptcy Code section 1146(a), any transfer from a Debtor to the Liquidating Trustee or to any entity under, pursuant to, in contemplation of, or in connection with the Plan or through: (a) the issuance, distribution, transfer or exchange of any debt, securities or other interest in the Debtors; (b) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment or recording of any lease or sublease; or (d) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles, or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

7. **No Further Approvals.** The transactions contemplated by the Plan shall be approved and effective as of the Effective Date without the need for any further state or local regulatory approvals or approvals by any non-Debtor parties, and without any requirement for further action by the Debtors or the Liquidating Trustee, as applicable.

8. **Dissolution of Committee.** The Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code section 1103 and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Committee shall be dissolved and the Committee's members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's Professionals shall terminate.

9. **Pre-Effective Date Injunctions or Stays.** All injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for in the Chapter 11 Cases pursuant to Bankruptcy Code sections 105 or 362 or otherwise that are in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

10. **Withholding and Reporting Requirements.** In connection with the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities and all distributions hereunder shall be subject to such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim that is to receive a distribution hereunder shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any government unit, including income, withholding and other tax obligations, on account of such distribution. The Liquidating Trustee has the

right, but not the obligation, not to make a distribution until such holder has made arrangements satisfactory to the Liquidating Trustee for payment of any such tax obligations. The Liquidating Trustee may require, as a condition to the receipt of a distribution, that the holder of an Allowed Claim complete the appropriate Form W-8 or Form W-9, as applicable to each holder. If such holder fails to comply with such request within one year, such distribution shall be deemed an unclaimed distribution.

**11. Allocation of Distributions Between Principal and Interest.** To the extent that any Allowed Claim entitled to distribution under the Plan consists of indebtedness and accrued but unpaid interest thereon, such distributions shall, for all income tax purposes, be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**E. Conditions Precedent to Effectiveness of the Plan**

**1. Conditions to the Effective Date.** Consummation of the Plan and the occurrence of the Effective Date are subject to satisfaction of the following conditions:

(a) The Bankruptcy Court shall have entered the Confirmation Order, and such Confirmation Order shall have become a Final Order;

(b) No request for revocation of the Confirmation Order under Bankruptcy Code section 1144 has been made, or, if made, remains pending; and

(c) All documents necessary to implement the transactions contemplated by this Plan are in form and substance acceptable to the Debtors.

**2. Waiver of Condition.**

The conditions set forth in Article 8.1 of the Plan, other than the condition requiring that the Confirmation Order shall have been entered by the Bankruptcy Court, may be waived in whole or in part by the Debtors.

**3. Notice of Effective Date.**

The Debtors shall file with the Bankruptcy Court a notice of the occurrence of the Effective Date within a reasonable period of time after the conditions in Article 8.1 of the Plan have been satisfied or waived pursuant to Article 8.2 of the Plan, and the Effective Date has occurred.

**4. Order Denying Confirmation.**

If the Plan is not consummated, then nothing contained in the Plan shall (a) constitute a waiver or release of any Claims against or Equity Interests in the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against, or Equity Interest in, the Debtors; (c) prejudice in any manner any right, remedy or Claim of the Debtors; (d) be deemed an admission against interest by the Debtors; or (e) constitute a settlement, implicit or otherwise, of any kind whatsoever.

**F. Discharge, Release, Injunction and Related Provisions**

**1. Discharge of Claims and Termination of Equity Interests.**

(a) **As of the Effective Date, except as otherwise explicitly provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Equity Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims and satisfaction or termination of all Equity Interests. Except as otherwise provided in the Plan or the Confirmation Order, Confirmation shall, as of the Effective Date: (i) discharge the Debtors from all Claims or other debts that arose before the Effective Date, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), in each case whether or not (w) a Proof of Claim is filed or deemed filed pursuant to**

Bankruptcy Code section 501, (x) a Claim based on such debt is Allowed pursuant to Bankruptcy Code section 502, (y) the holder of a Claim based on such debt has accepted the Plan or (z) such Claim is listed in the Schedules; and (ii) satisfy, terminate or cancel all Equity Interests and other rights of equity security holders in the Debtors.

(b) As of the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Persons and Entities shall be precluded from asserting against the Debtors, or their respective successors or property, any other or further Claims, demands, debts, rights, causes of action, liabilities or equity interests based upon any act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order will be a judicial determination, as of the Effective Date, of a discharge of all such Claims and other debts and liabilities against the Debtors and satisfaction, termination or cancellation of all Equity Interests and other rights of equity security holders in the Debtors, pursuant to Bankruptcy Code sections 524 and 1141, and such discharge will void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

## **2. Injunctions.**

(a) Except as otherwise provided in the Plan, the Liquidating Trust Agreement or the Confirmation Order, all Persons or Entities who have held, hold or may hold Claims, Equity Interests, Causes of Action or liabilities that: (i) are subject to compromise and settlement pursuant to the terms of the Plan; (ii) have been released pursuant to Section 9.3 of the Plan; (iii) are subject to exculpation pursuant to Section 9.4 of the Plan (but only to the extent of the exculpation provided in Section 9.4 of the Plan); or (iv) are otherwise stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner any action or other proceeding, including on account of any Claims, Equity Interests, Causes of Action or liabilities that have been compromised or settled against the Debtors or any Person or Entity so released or exculpated (or the property or estate of any Person or Entity, directly or indirectly, so released or exculpated) on account of or in connection with or with respect to any released, settled, compromised, or exculpated Claims, Equity Interests, Causes of Action or liabilities.

## **3. Releases.**

(a) **Debtor Releases.** Notwithstanding anything contained herein to the contrary, on the Confirmation Date and effective as of the Effective Date and to the fullest extent authorized by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged by the Debtors and their Estates from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or any related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

(b) **Releases by Holders of Claims and Equity Interests.** Except for any obligation, claim, cause of Action or liability arising expressly under the Plan or reserved by any Person or Entity pursuant to the Plan, on the Confirmation Date and effective as of the Effective Date and to the fullest

extent authorized by applicable law, holders of Claims and Equity Interests shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or any related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

**4. Limitation on Releases.**

Notwithstanding any other provision of Article IX of the Plan, nothing in Article IX of the Plan shall be deemed to release the Debtors' current and former officers and directors, shareholders, affiliates, subsidiaries, principals, employees, agents, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers and consultants from any claim related to their conduct with respect to the prepetition operations and affairs of the Debtors. Such claims include, without limitation, claims for deepening insolvency; breach of fiduciary duties; misrepresentation, negligence, and other misconduct; aiding and abetting such misconduct; fraudulent conveyances and preference recoveries.

**5. Exculpation.**

Notwithstanding anything contained herein to the contrary, on the Confirmation Date and effective as of the Effective Date and to the fullest extent authorized by applicable law, none of the Exculpated Parties, shall have or incur any liability for any claim, cause of action, or other assertion of liability for any act taken or omitted in connection with, or arising out of, the Chapter 11 Cases or the negotiation, formulation, preparation, administration, consummation and/or implementation of the Plan, or any contract, instrument, document, or other agreement entered into pursuant thereto through the Effective Date; provided that the foregoing shall not affect the liability of any Person or Entity that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan and administration thereof.

**6. Retention and Enforcement and Release of Causes of Action.**

Except as otherwise provided in the Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b), the Debtors and their Estates expressly reserve all rights to retain and prosecute any and all of the Causes of Action including, without limitation, the Causes of Action identified in the Plan (the "Retained Causes of Action"). The Debtors shall have, prior to the Effective Date, and the Liquidating Trustee shall have, on or after the Effective Date, sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting and otherwise administering (or decline to do any of the foregoing) any or all of the Retained Causes of Action pursuant to the terms of the Plan and the Liquidating Trust Agreement. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to any or all of the Retained Causes of Action upon, after, or as a consequence of Confirmation or the occurrence of the Effective Date.

## VIII. RISK FACTORS

Holders of Claims entitled to vote on the Plan should read and consider carefully the risk factors set forth below before voting to accept or reject the Plan. Although there are many risk factors discussed below, these factors should not be regarded as constituting the only risks present in connection with the Debtors' business or the Plan and its implementation.

### A. Value of the Debtors' Assets and Distributions

Substantially all of the Debtors' assets have been sold at various Bankruptcy Court-approved Sales. The Debtors make no representation as to the net proceeds that may be realized upon the sale of the remainder of Debtors' assets, if any, or that there will be any proceeds at all to distribute to Creditors under the Plan. It is the Debtors' objective that an orderly liquidation of Debtors' properties by the Liquidating Trustee will provide more to Creditors than the alternative of a fire sale liquidation of the Debtors' properties would have under Chapter 7; however, under the circumstances, the net proceeds available for distribution may be lower than expected, thereby decreasing recoveries for holders of Allowed Claims.

### B. Allowed Amount of Claims

#### 1. The outcome of challenging Disputed Claims is uncertain.

The Debtors and/or the Liquidating Trustee may challenge, object to, and/or dispute certain filed and scheduled Claims. While disallowance of Claims will increase the amount of funds available for distribution to holders of other Allowed Claims, there is no assurance that the Debtors and/or the Liquidating Trustee will be successful in challenging such Claims; it will not be permitted to expend resources of the Estates to do so unless all holders of Allowed Claims have been paid in full in accordance with the Plan. Therefore, the pursuit of Disputed Claims by the Debtors or the Liquidating Trustee, as applicable, shall not take place if there are insufficient funds in the Estates to do so, or, there is otherwise no mutual agreement of the Creditors allowing the expense of such pursuit to be surcharged to collateral that relates to the challenged Claim.

Although Claims may be Disputed by the Debtors or Liquidating Trustee, as applicable, it will still be necessary to reserve funds for such Disputed Claims, and, in the event that the Bankruptcy Court determines that such Disputed Claims are valid Allowed Claims that must be paid, then the amount of funds available for distribution to the other holders of Allowed Claims will be reduced, *i.e.*, the creditor pool will be increased and the amount available for distribution will be decreased resulting in a longer time (and fewer funds) to pay Allowed Claims in full.

#### 2. Administrative Claims, Priority Tax Claims, Secured Claims and Priority Non-Tax Claims may be higher than currently estimated.

The Allowed amount of Administrative Claims, Priority Tax Claims, Secured Claims and Priority Non-Tax Claims may exceed the Debtors' estimates. For example, the Debtors' current estimates as to the amount owed on account of Claims asserted by applicable taxing authorities are based upon the amounts identified in the Debtors' Schedules and Proofs of Claim that were filed prior to the Bar Date. The Allowed amount of Administrative Claims and Priority Tax Claims may be higher or lower than anticipated to the extent the applicable taxing authorities (a) have not yet filed a Claim on account of prepetition tax liabilities but assert that such amounts should be Allowed notwithstanding the expiration of the Bar Date and/or (b) request payment of Administrative Claims prior to the Administrative Claims Bar Date on account of postpetition tax liabilities. Under the Bankruptcy Code, the Plan must provide for payment in full of such Claims unless the holders of such Claims agree to different treatment. Because there is no source of additional funds for the payment of such Claims to the extent the Debtors' projections are exceeded, if the Bankruptcy Court determines that such Claims are valid Allowed Administrative Claims and Priority Tax Claims, then the amount of funds available for distribution to the holders of Allowed General Unsecured Claims may be negatively impacted.

**3. Disputes with Blink Acquisition regarding ownership of the Scottsdale House, and responsibility with regard to certain contractual obligations and employee wages are uncertain.**

Contrary to the contentions of Blink Acquisition, the Debtors believe that ownership of the Scottsdale House was not transferred to Blink Acquisition pursuant to the Sales. In addition, the Debtors believe, pursuant to the Sales, certain contractual obligations and employee wages are the responsibility of Blink Acquisition. If the Bankruptcy Court, however, determines that the Scottsdale House was transferred to Blink Acquisition through the Sales or that certain contractual obligations and employee wages are not the responsibility of Blink Acquisition, the amount of funds available for distribution to the holders of Allowed General Unsecured Claims may be negatively impacted.

**C. The DOE's Claim**

It is the Debtors' understanding that pursuant to the Sale Order approving the Sale to Blink Acquisition, which closed on October 16, 2013 [Docket No. 213], Blink Acquisition is negotiating with the DOE to achieve a novation of the Debtors' agreements with the United States government that were assigned in connection with the Sale to Blink Acquisition (the "Assigned Contracts"). By the terms of that Sale Order, upon and after the transfer of the assets thereunder, the DOE will not assert any claims relating to the Assigned Contracts against the Debtors or their property. In addition, the terms of the Sale Order provide that the DOE may assert, within 180 days of the closing of the Sale to Blink Acquisition, any unsecured claims that the DOE may have with regard to any issues arising from invoices submitted by the Debtors related to the Assigned Contracts. On April 10, 2014, the DOE filed Proof of Claim No. 42, asserting an unsecured claim against Debtor Electric Transportation Engineering Corporation (d/b/a ECOTality North America) in the amount of \$8,068,007.75.<sup>9</sup> Although the Debtors understand that the DOE and Blink Acquisition are negotiating towards finalizing the novation of the Assigned Contracts, upon which the Debtors believe the DOE will then withdraw its claim against the Estates, there is a risk that the novation process may not be completed prior to solicitation of votes on the Plan or at all.

**D. Liquidating Trustee Fees and Expenses**

The fees and expenses of the Liquidating Trustee may be in excess as to what is anticipated. Moreover, the Liquidating Trustee may not be successful in prosecuting certain Causes of Action. As a result, the amounts available for distribution may be lower than expected, thereby decreasing recoveries for holders of Allowed Claims.

**E. Non-Confirmation or Non-Consummation of the Plan**

**1. Parties in interest may object to the Plan's classification of Claims and Equity Interests.**

Bankruptcy Code section 1122 provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**2. The Debtors may fail to satisfy vote requirements.**

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan. There

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<sup>9</sup> The DOE also asserts that its claim is entitled to treatment as a Secured Claim under Bankruptcy Code section 506 to the extent it is subject to set off by a Claim of the Debtors against DOE or any other United States department, agency or instrumentality. The Debtors reserve all rights with respect to this Claim and any other Claim(s) asserted by the DOE.

can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the holders of Allowed Claims as those proposed in the Plan.

**3. The Debtors may not be able to secure Confirmation of the Plan.**

Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting holder of an Allowed Claim, or a holder of Claim or Equity Interest that is deemed to reject the Plan, might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that this Disclosure Statement, the balloting procedures and voting results are appropriate, the Bankruptcy Court may still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class than the treatment currently provided in the Plan. This less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

**4. The conditions precedent to the Effective Date may not occur.**

As more fully set forth in Article VIII of the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

**5. Substantive Consolidation**

Despite the Debtors’ belief that the facts and circumstances of the Chapter 11 Cases support substantive consolidation, there is a possibility that the Bankruptcy Court will not approve substantive consolidation in connection with the Plan, and the Debtors may be forced to seek Confirmation of alternative plan(s).

**6. Nonconsensual Confirmation.**

In the event that any Impaired Class of Claims does not vote to accept the Plan, or if an Impaired Class of Claims or Equity Interests is deemed to reject the Plan, the Bankruptcy Court may nevertheless confirm the Plan at the Debtors’ request if at least one Impaired Class has accepted the Plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each Impaired Class that has not accepted the Plan, the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting Impaired classes. The Debtors intend to seek Confirmation over the deemed rejection of the Plan by holders of Class 4, 5 and 6 Claims. Although the Debtors believe that the Plan satisfies the nonconsensual Confirmation requirements of Bankruptcy Code section 1129(b), there can be no assurance that the Bankruptcy Court will reach the same conclusion. In addition, the pursuit of nonconsensual Confirmation or consummation of the Plan may result in, among other things, delay and increased expenses relating to Compensation Claims.



## IX. SOLICITATION AND VOTING PROCEDURES

The following summarizes briefly the procedures to accept or reject the Plan (the "Solicitation Procedures"). Holders of Claims are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys.

**A. The Solicitation Package.** The following materials, as may be amended or supplemented from time to time, constitute the solicitation package (the "Solicitation Package"):

- A cover letter that, among other things, (i) describes the contents of the Solicitation Package; (ii) generally sets forth the solicitation process as approved by the Bankruptcy Court; and (iii) encourages holders in the voting Class to accept the Plan;
- An appropriate form of ballot, substantially in the form of Official Form 14, together with the applicable voting instructions;
- A notice setting forth (i) the deadline established for submitting Ballots, (ii) the time, date and place of the combined Confirmation Hearing and the hearing to consider final approval of the Disclosure Statement, and (iii) the deadline for filing objections to final approval of the Disclosure Statement and/or Confirmation of the Plan;
- The Disclosure Statement, as approved by the Bankruptcy Court, with all exhibits thereto (including the Plan, exhibits to the Plan, each as may be amended or supplemented);
- The order approving the Disclosure Statement on a conditional basis or otherwise; and
- Any such other materials as the Bankruptcy Court may direct.

The voting Class, Class 3, shall be served by first class mail with copies of this Disclosure Statement, the Plan and the appropriate ballot. The Solicitation Package will not be provided to other Classes because all other Classes are either (i) Impaired and deemed to reject the Plan or (ii) Unimpaired and deemed to accept the Plan, and therefore not entitled to vote. **Any party who desires additional copies of these documents may request them from the Claims and Noticing Agent either by telephone, (866) 967-1788, by emailing ECOInfo@kccllc.com, or by visiting www.kccllc.net/ECOtality.**

### **B. Voting Deadline**

The period during which Ballots with respect to the Plan will be accepted by the Debtors will terminate on **August 25, 2014 at 5:00 p.m. (Arizona Time)**, unless the Debtors, in their sole discretion, extend the date until which Ballots will be accepted. Except to the extent the Debtors so determine or as permitted by the Bankruptcy Court, Ballots that are received after the Voting Deadline will not be counted or otherwise used by the Debtors in connection with the Debtors' request for Confirmation of the Plan (or any permitted modification thereof).

The Debtors may extend the period of time (on a daily basis, if necessary) during which Ballots will be accepted for any reason, including determining whether or not the requisite number of acceptances have been received. The Debtors will give notice of any extension in a manner deemed reasonable to the Debtors in their discretion.

### **C. Voting Instructions**

Only the holders of General Unsecured Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them to the Claims and Noticing Agent. It is important to follow the specific instructions provided on each Ballot. Each Ballot should be sent to the following address such that it is actually received on or before the Voting Deadline:

**ECOTality Ballot Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, California 90245**

The Debtors have engaged the Claims and Noticing Agent to assist in the balloting and tabulation process. The Claims and Noticing Agent will process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan, and the Debtors will file, or cause to be filed, the voting report (the "Voting Report") no later than three (3) business days prior to the Confirmation Hearing.

**The deadline by which the Claims and Noticing Agent must actually receive your Ballot is August 25, 2014 at 5:00 p.m. (Arizona Time). Any Ballot that is properly executed, but which does not clearly indicate an acceptance or rejection of the Plan or which indicates both an acceptance and a rejection of the Plan, shall not be counted.**

### **NOTE TO VOTING CLASS**

By signing and returning a Ballot, each holder of an General Unsecured Claim will be certifying to the Bankruptcy Court and the Debtors that, among other things:

- the holder has been provided with a Solicitation Package and understands that the solicitation of votes for the Plan is subject to all of the terms and conditions set forth in the Disclosure Statement, the Plan and the remainder of the Solicitation Package;
- the holder has not relied on any statement made or other information received from any person or entity with respect to the Plan other than the information contained in the Disclosure Statement, Solicitation Package or other publicly available materials;
- the holder has cast the same vote with respect to all Claims in the particular Class;
- no other Ballots with respect to the same Claim have been cast, or, if any other Ballots have been cast with respect to such Claim, then any such Ballots are thereby revoked, in accordance with the procedures set forth herein;
- the Ballot does not constitute, and shall not be deemed to be, a Proof of Claim or Equity Interest or an assertion or admission of a Claim or Equity Interest; and
- only holders of General Unsecured Claims shall be entitled to vote with regard to such Claims.

#### **D. Voting Tabulation**

Unless the Debtors decide otherwise, Ballots received after the Voting Deadline may not be counted. Except as otherwise provided in the Solicitation Procedures, a Ballot will be deemed delivered only when the Claims and Noticing Agent actually receives the executed Ballot as instructed in the voting instructions above. No Ballot should be sent to the Bankruptcy Court, the Debtors, the Debtors' agents (other than the Claims and Noticing Agent) or the Debtors' financial or legal advisors. The Debtors expressly reserve the right to amend from time to time the terms of the Plan (subject to compliance with the requirements of Bankruptcy Code section 1127 and the terms of the Plan regarding modifications).

To the extent a holder holds multiple Claims within a particular Class, the Claims and Noticing Agent may, in its discretion, and to the extent possible, aggregate the Claims of any particular holder within such Class for the purpose of counting votes.

In the event a designation of lack of good faith is requested by a party in interest under Bankruptcy Code section 1126(e), the Bankruptcy Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected.

No later than three (3) business days before the Confirmation Hearing, the Debtors shall cause to be filed the Voting Report setting forth the results of the voting by Class. The Voting Report shall include: (i) a list of all Creditors who have filed acceptances or rejections of the Plan; (ii) a tally, by Class, of the number of acceptances and rejections and the dollar amount in Claims and the amount of Allowed interests represented by the acceptances and rejections; and (iii) identification of any Ballots received after the Voting Deadline set by the Bankruptcy Court and shall state whether such Ballots are included in the tally. The Voting Report also shall delineate every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity (each a “Defective Ballot”), including, but not limited to, those Ballots that: (i) are received after the Voting Deadline unless the Debtors have granted an extension of the Voting Deadline with respect to such Ballot; (ii) are (in whole or in material part) illegible or unidentifiable; (iii) lack signatures; (iv) lack necessary information; (v) are damaged; (vi) are cast by a Person or Entity that does not hold a Claim in a Class entitled to vote on the Plan as of the Voting Record Date; (vii) does not indicate an acceptance or a rejection or that indicates both an acceptance and a rejection; (viii) are sent to the Bankruptcy Court, the Debtors, the Debtors’ agents, advisors or representatives (other than the Claims and Noticing Agent); or (ix) partially accept and partially reject the Plan. The Voting Report shall also state whether any objections to Confirmation were filed and whether the Debtors intend to proceed with confirmation under Bankruptcy Code section 1129(a) or (b).

The Claims and Noticing Agent will attempt to reconcile the amount of any Claim reported on a Ballot with the Debtors’ records, but in the event such amount cannot be timely reconciled without undue effort on the part of the Claims and Noticing Agent, the amount shown in the Debtors’ records shall govern.

## **X. CONFIRMATION OF THE PLAN**

### **A. Requirements for Confirmation of the Plan**

Among the requirements for Confirmation of the Plan pursuant to Bankruptcy Code section 1129 are: (i) the Plan is in the “best interests” of holders of Claims; (ii) the Plan is feasible and (iii) the Plan is accepted by all Impaired Classes of Claims, or if rejected by an Impaired Class or if an Impaired Class is deemed to reject, the Plan “does not discriminate unfairly” and is “fair and equitable” as to the Class.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies all of the requirements of Bankruptcy Code section 1129. The Debtors believe that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11; (ii) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11; and (iii) the Plan has been proposed in good faith.

### **B. Best Interests of Creditors/Liquidation Analysis**

Often called the “best interests” test, Bankruptcy Code section 1129(a)(7) requires that a bankruptcy court find as a condition to Confirmation, that a chapter 11 plan provides, with respect to each impaired<sup>10</sup> class of claims and interests, that each holder of an impaired claim or interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that the holder would receive or retain if the debtors liquidated under chapter 7.

The Debtors believe that the Plan satisfies the best interests test because, among other things, the recoveries expected to be available to holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, and distributions under the Plan will commence at an earlier point in time than they would if a chapter 7 trustee were put in place.

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor’s assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the Estates after

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<sup>10</sup> A class of claims is “impaired” within the meaning of Bankruptcy Code section 1124 unless the plan (a) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest entitles the holder of such claim or equity interest or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

satisfaction of secured creditors' claims from their collateral, administrative expenses are next to receive payment. Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

Substantially all of the Debtors' assets have already been liquidated during the Chapter 11 Cases, and the Debtors only have one remaining employee who is in the process of seeking employment elsewhere. The Debtors have diligently proceeded with monetizing or attempting to monetize all assets of their Estates. Although the Plan effects a liquidation of the Estates' remaining assets and a chapter 7 liquidation would have the same goal, the Debtors believe that the Plan provides the best source of recovery for holders of Allowed General Unsecured Claims. Liquidating the Debtors' assets under chapter 7 would require the appointment of a chapter 7 trustee. Such an appointment would delay distributions to holders of Claims and would likely provide a smaller distribution to holders of Allowed Claims because of the additional fees and expenses which would be incurred during a chapter 7 liquidation, including potential added time, fees and expenses incurred by a chapter 7 trustee and any of its retained professionals who would need to familiarize themselves with the Chapter 11 Cases. Given the proposed Liquidating Trustee's familiarity with the Debtors' Chapter 11 Cases and assurances that no additional fees, beyond the fees she is entitled to receive for her legal services, will be charged for the proposed Liquidating Trustee's services, the Debtors, accordingly, believe that the Plan is in the best interests of creditors. In the event Ms. Johnsen does not serve as Liquidating Trustee for some reason, the Debtors will recommend another Person or Entity that is familiar with the Debtors and the Chapter 11 Cases, such recommendation shall be reasonably acceptable to the Committee, to ensure that the Plan remains in the best interest of creditors.

#### **C. Feasibility**

Bankruptcy Code section 1129(a)(11) requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in the plan of reorganization).

The Debtors effectively ceased conducting business upon the closing of the sales approved by the Sale Orders, with the exception of certain wind down activities, and will not conduct business after the Effective Date. The Plan provides for dissolution of the Debtors, liquidation of the Debtors' remaining assets and distributions to Creditors by the Liquidating Trustee in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan and Liquidating Trust Agreement. The Liquidating Trustee's ability to make the distributions described in the Plan does not depend on future earnings or operations of the Debtors. Accordingly, the Debtors believe that the Plan is feasible and meets the requirements of Bankruptcy Code section 1129(a)(11).

#### **D. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, except as described in the following section, that each class of claims or equity interests impaired under a plan, accept the plan. A class that is not impaired under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such a class is not required.

Bankruptcy Code section 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in a dollar amount and more than one-half in a number of allowed claims in that class, counting only those claims that have actually voted to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually cast their ballots in favor of acceptance.

#### **E. Confirmation without Acceptance by All Impaired Classes**

Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted it; provided, however, that the plan has been accepted by at least one impaired class. Pursuant to Bankruptcy Code section 1129(b), notwithstanding an impaired class's rejection or deemed rejection of the plan, the plan will be confirmed, at the plan proponent's request, in a procedure commonly known as a "cramdown" so long

as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

The Debtors intend to request Confirmation of the Plan, as it may be modified from time to time, under the “cramdown” provision Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Supplement document, including the right to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b).

#### **1. No Unfair Discrimination**

The “unfair discrimination” test applies to classes of claims or interests that are of equal priority and are receiving different treatment under a plan. The test does not require that the treatment be the same or equivalent, but that treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly. A plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. Under the Plan, all Classes are provided treatment that is substantially equivalent to as the treatment that is provided to other Classes that have equal rank.

#### **2. Fair and Equitable Test**

The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in the class. As to the dissenting (or deemed rejecting) class, the test sets different standards depending upon the type of claims or equity interests in the class. A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all.

The Debtors submit that Confirmation of the Plan pursuant to the “cramdown” provisions of Bankruptcy Code section 1129(b) is proper, as the Plan is structured so that it does not “discriminate unfairly” and satisfies the “fair and equitable” requirement. The Debtors believe that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.

### **XI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

#### **A. Introduction**

The following discussion is a summary of the Debtors’ analysis of certain U.S. federal income tax consequences of the Consummation of the Plan to the Debtors and certain holders of Claims. This summary is based on the title 26 of the Tax Code, the Treasury Regulations, judicial authorities, published administrative positions of the IRS and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. The Debtors have not requested, nor do they intend to request, a private letter ruling from the IRS or an opinion of counsel with respect to any of the aspects of the Plan. The discussion below is not binding upon the IRS or any court and does not reflect any independent analysis by the Debtors. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not apply to holders of Claims that are not “U.S. persons” (as such phrase is defined in the Tax Code) and does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to such holders in light of their individual circumstances. This discussion does not address tax issues with respect to such holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies and regulated investment companies). No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. The

following discussion assumes that each holder of a Claim holds its Claim as a “capital asset” within the meaning of section 1221 of the Tax Code.

**ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL AND NON-UNITED STATES TAX CONSEQUENCES OF THE PLAN.**

**IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE TAX CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THIS DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**B. U.S. Federal Income Tax Consequences to Debtors**

The Debtors may incur federal income tax liability as a result of the transactions contemplated by the Plan, based in part on the value of the assets transferred to the Liquidating Trust, the amount of the Debtors' net operating losses and the application of the federal tax rules regarding the alternative minimum tax. Such tax liability, if any, shall be treated in accordance with the terms and provisions of the Plan.

Pursuant to the Plan, the Debtors' assets will be transferred to the Liquidating Trust, which will be created solely for the purposes of liquidating and monetizing the Liquidating Trust Assets and making distributions to certain holders of Allowed Claims in an orderly liquidation during the term of the Liquidating Trust. The transfer of Liquidating Trust Assets to the Liquidating Trust may result in the recognition of taxable gain or loss to the Debtors, based on the difference between the fair market value of such assets and the Debtors' tax basis in such assets. Further, Debtors may recognize cancellation of debt income upon transferring the Liquidating Trust Assets to the Liquidating Trust. The Debtors may be required to pay federal income tax on some or all of any gains or cancellation of debt income recognized. There could also be some liability for taxes in certain states and under the federal alternative minimum tax.

**C. U.S. Federal Income Tax Consequences to Holders of General Unsecured Claims**

General Unsecured Claims will be cancelled on the Effective Date and the holders of such Claims will be entitled to receive, on account of their General Unsecured Claims, *inter alia*, their *pro rata* share of the Unsecured Claims Fund. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, pursuant to Treasury Regulation section 301.7701-4(d) and related regulations, the Liquidating Trustee intends to take a position on the Liquidating Trust's tax return that the Liquidating Trust should be treated as a grantor trust set up for the benefit of beneficiaries of the Liquidating Trust. Holders of Allowed General Unsecured Claims that receive beneficial interests in the Liquidating Trust will be treated for U.S. federal income tax purposes as receiving their *pro rata* shares of the Liquidating Trust Assets from the applicable Debtors in a taxable exchange and then depositing them in the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust.

Holders of General Unsecured Claims should recognize gain or loss equal to the difference between (a) the fair market value as of the Effective Date of their *pro rata* share of the interests in the Unsecured Claims Fund (to the extent such *pro rata* share is not allocable to accrued interest) and (b) the holder's tax basis in the General Unsecured Claims surrendered by the holder. Such gain or loss should be capital in nature (subject to the “market discount” rules described below) and should be long-term capital gain or loss if the Claims were held for more than one year by the holder. To the extent that any portion of the interest in the Unsecured Claim Fund received in the exchange is allocable to accrued interest, the holder may recognize ordinary income (see discussion below). A holder's tax basis in the interest in the Unsecured Claims Fund received should equal its fair market value as of the

Effective Date. A holder's holding period for the interest in the Unsecured Claims Fund should begin on the day following the Effective Date.

Holders of Allowed General Unsecured Claims that receive interest in the Unsecured Claims Fund will be required to report on their U.S. federal income tax returns their share of the Liquidating Trust's items of income, gain, loss, deduction and credit in the year recognized by the Liquidating Trust. This requirement may result in such holders being subject to tax on their allocable share of the Liquidating Trust's taxable income prior to receiving any cash distributions from the Liquidating Trust. Holders of Allowed General Unsecured Claims that receive beneficial interests in the Liquidating Trust are urged to consult their tax advisors regarding the tax consequences of the right to receive and of the receipt (if any) of property from the Liquidating Trust.

Subject to contrary definitive guidance from the IRS or a court of competent jurisdiction (including the receipt by the Liquidating Trustee of an IRS private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee will (A) elect to treat the Disputed Claims Reserve and the reserves for Disputed General Unsecured Claims as "disputed ownership funds" governed by Treasury Regulation section 1.468B-9 and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

Accordingly, the Disputed Claims Reserve and the reserves for Disputed General Unsecured Claims will be subject to tax annually on a separate entity basis on any net income earned with respect to the Liquidating Trust Assets in such reserves, and all distributions from such reserves (which distributions will be net of the related expenses of the reserve) will be treated as received by holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Debtors, the Liquidating Trustee and the beneficiaries of the Liquidating Trust) will be required to report for tax purposes consistently with the foregoing.

#### **1. Accrued but Unpaid Interest**

To the extent that any amount received by a holder of a Claim is attributable to accrued interest, such amount should be taxable to the holder as interest income. Conversely, a holder of a Claim may be able to recognize a deductible loss (or, possibly, a write off against a reserve for worthless debts) to the extent that any accrued interest on the Claims was previously included in the holder's gross income but was not paid in full by the Debtors or the Liquidating Trust. Such loss may be ordinary, but the tax law is unclear on this point.

The extent to which the consideration received by a holder of a Claim will be attributable to accrued interest is unclear. Nevertheless, the Treasury Regulations generally treat a payment under a debt instrument first as a payment of accrued and untaxed interest and then as a payment of principal. Application of this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear. Pursuant to the Plan, distributions in respect of Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest. However, the provisions of the Plan are not binding on the IRS or a court with respect to the appropriate tax treatment for holders of Allowed Claims.

#### **2. Market Discount**

Under the "market discount" provisions of sections 1276 through 1278 of the Tax Code, some or all of the gain realized by a holder of a Claim who exchanges the Claim for consideration (or the right to receive consideration) on the Effective Date may be treated as ordinary income (instead of capital gain) to the extent of the amount of "market discount" on the Claim. In general, a debt instrument is considered to have been acquired with "market discount" if its holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest," or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the Claim, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Gain, if any, recognized by a holder on the exchange of a Claim pursuant to the Plan that had been acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon

while such Claims were considered to be held by the holder (unless the holder elected to include market discount in income as it accrued).

### **3. Limitation on Use of Capital Losses**

Holders of Claims who recognize capital losses as a result of the distributions under the Plan will be subject to limits on their use of capital losses. For noncorporate holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (a) \$3,000 (\$1,500 for married individuals filing separate returns) or (b) the excess of the capital losses over the capital gains. Holders, other than corporations, may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. Holders who have more capital losses than can be used in a tax year may be allowed to carry over the excess capital losses for use in succeeding tax years. Corporate holders may only carry over unused capital losses for the five years following the capital loss year, but are allowed to carry back unused capital losses to the three years preceding the capital loss year.

#### **D. Withholding and Reporting**

Certain payments, including payments in respect of Claims pursuant to the Plan, are generally subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding at a rate of 28% unless the holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your U.S. federal income tax liability provided the required information is furnished to the IRS.

In addition, a beneficiary of the Liquidating Trust that is not a U.S. person may be subject to up to 30% withholding, depending on, among other things, the particular type of income and whether the type of income is subject to a lower treaty rate. A non-U.S. holder may also be subject to other adverse consequences in connection with the implementation of the Plan. As discussed above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. holders of Claims.

Under the Foreign Account Tax Compliance Act (“FATCA”), which was enacted in 2010, foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding on the receipt of “withholdable payments.” For this purpose, “withholdable payments” are generally U.S. source payments of fixed or determinable, annual or periodical income, and also include gross proceeds from the sale of any property of a type which can produce U.S. source interest or dividends. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax.

As currently proposed, FATCA withholding rules would apply to U.S.-source payments made after June 30, 2014, and to payments of gross proceeds from the sale or other disposition of property of a type which can produce U.S. source interest or dividends that occurs after December 31, 2016. Although administrative guidance and Treasury Regulations have been issued, the exact scope and application of these rules remains unclear and potentially subject to material changes.

**THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER’S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**



## **XII. CONCLUSION AND RECOMMENDATION**

All holders of Claims entitled to vote are urged to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will actually be received by the Voting Deadline.

Dated: July 1, 2014

ECotality, Inc.  
Electric Transportation Engineering Corporation  
ECotality Stores, Inc.  
ETEC North, LLC  
The Clarity Group, Inc.  
G.H.V. Refrigeration, Inc.

By: /s/ Susie Herrmann  
Name: Susie Herrmann  
Title: Chief Financial Officer

**Exhibit A**

**Plan**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:

ELECTRIC TRANSPORTATION ENGINEERING  
CORPORATION (d/b/a ECOTALITY NORTH  
AMERICA), *et al.*<sup>1</sup>

Debtors.

This filing applies to:

☒ All Debtors

☐ Specified Debtors

Chapter 11

Case No. 2:13-BK-16126 (MCW)

Jointly Administered

**DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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Co-Counsel to the Debtors and Debtors in Possession

Dated: July 1, 2014

**Nothing contained herein shall constitute an offer, acceptance, or a legally binding obligation of the Debtors or any other party in interest and this Plan is subject to approval by the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.**

<sup>1</sup> The Debtors in these jointly administered chapter 11 cases and the last four digits of their respective Employer Identification Numbers are: (i) ECOTALITY, Inc. (5422); (ii) Electric Transportation Engineering Corporation (4755); (iii) ECOTALITY Stores, Inc. (2643); (iv) ETEC North, LLC (n/a); (v) The Clarity Group, Inc. (8832); and (vi) G.H.V. Refrigeration, Inc. (4512). The Debtors' service address is ECOTALITY, Inc., P.O. Box 20336, Phoenix, AZ 85036-0336.

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#### **INDEX OF EXHIBITS**

Exhibit A	Liquidating Trust Agreement
Exhibit B	Non-Exclusive List of Retained Causes of Action
Exhibit 1	Non-Exclusive List of Accounts Receivables of Electric Transportation Engineering Corporation (d/b/a ECotality North America)

## **INTRODUCTION**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) propose this joint plan of liquidation (the “Plan”) for the resolution of outstanding claims against and interests in the Debtors pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I.B hereof. Holders of Claims and Equity Interests may refer to the Disclosure Statement for a discussion of the Debtors’ history, businesses, assets, historical financial information and developments during the Chapter 11 Cases, as well as a summary and description of the Plan and certain related matters. The Debtors are the proponents of the Plan within the meaning of Bankruptcy Code section 1129.

This Plan is advanced jointly by the Debtors as a plan for liquidation of the Debtors’ remaining assets for the benefit of creditors. As more thoroughly set forth in the Disclosure Statement, the Debtors operated interchangeably. Any attempt to divide the remaining assets among the entities would lead to large inequities among the creditors. Accordingly, the Plan seeks to substantively consolidate the entities into a single entity. The remaining assets of all of the Debtors will be liquidated into a single pool. The proceeds then will be paid ratably within classes to all of the creditors of the Debtors in accordance with the applicable provisions of the Bankruptcy Code. Upon Confirmation, this objective will be accomplished through a liquidating trust, all as more thoroughly set forth herein.

## **ARTICLE I.** **DEFINITIONS AND RULES OF INTERPRETATION**

**A. Rules of Interpretation and Governing Law.** For purposes of this document: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in Bankruptcy Code section 102 shall apply; and (h) any term used in capitalized form herein that is not otherwise defined, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Arizona, without giving effect to the principles of conflict of laws thereof.

**B. Definitions.** The following terms (which appear in the Plan as capitalized terms) shall have the meanings set forth below. A term used in the Plan and not defined in the Plan but that is defined in the Bankruptcy Code shall have the meaning set forth in the Bankruptcy Code.

1.1 “Administrative Claim” means a Claim for costs and expenses of administration of the Chapter 11 Cases that is Allowed under Bankruptcy Code sections 503(b), 507(a) or 1114(e)(2), including, without limitation, (a) any actual and necessary expenses of preserving the Estates; (b) any actual and necessary expenses of operating the Debtors’ business; (c) any actual indebtedness or obligations incurred or assumed by the Debtors during the pendency of the Chapter 11 Cases in connection with the conduct of their businesses; (d) any actual expenses necessary or appropriate to facilitate or effectuate the Plan; (e) any amount required to be paid under

Bankruptcy Code section 365(b)(1) in connection with the assumption of executory contracts or unexpired leases; (f) all allowances of compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330(a), 331 or 503(b)(2), (3), (4) or (5); (g) Claims arising under Bankruptcy Code section 503(b)(9); and (h) all fees and charges payable pursuant to section 1930 of title 28 of the United States Code.

1.2 “Allowed” shall mean, with reference to any Claim or Equity Interest, or any portion thereof, in any Class or category specified, against or of a Debtor, (a) a Claim or Equity Interest that has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary Proof of Claim has been filed and as to which no objection to allowance or priority or request for estimation has been filed prior to the Claims Objection Bar Date; (b) a Claim or Equity Interest for which a Proof of Claim has been timely filed in a liquidated amount and not contingent and as to which no objection to allowance, to alter priority, or request for estimation has been timely interposed and not withdrawn within the applicable period of limitation fixed by the Plan or applicable law; (c) a Claim or Equity Interest as to which any objection has been settled, waived, withdrawn or denied by a Final Order to the extent such Final Order provides for the allowance of all or a portion of such Claim or Equity Interest; or (d) a Claim or Equity Interest that is expressly allowed (i) pursuant to a Final Order, (ii) pursuant to an agreement between the holder of such Claim or Equity Interest and the Debtors and the Liquidating Trustee, as applicable or (iii) pursuant to the terms of the Plan. Unless otherwise specified in the Plan or in an order of the Bankruptcy Court allowing such Claim or Equity Interest, “Allowed” in reference to a Claim shall not include (a) any interest on the amount of such Claim accruing from and after the Petition Date; (b) any punitive or exemplary damages; or (c) any fine, penalty or forfeiture. Any Claim listed in the Schedules as disputed, contingent, or unliquidated, and for which no Proof of Claim has been timely filed, is not considered Allowed and shall be expunged without further action and without any further notice to or action, order, or approval of the Bankruptcy Court.

1.3 “Allowed Claim” means a Claim or any portion thereof, without duplication, that has been Allowed.

1.4 “Administrative Claims Bar Date” means the deadline for filing requests for payment of Allowed Administrative Claims (other than Compensation Claims), which shall be the first Business Day that is forty-five (45) days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

1.5 “Administrative Claims Objection Bar Date” means the deadline for filing objections to requests for payment of Allowed Administrative Claims (other than requests for payment of Compensation Claims), which shall be the first Business Day that is one hundred eighty (180) days following the Effective Date; provided, that, the Administrative Claims Objection Bar Date may be extended by order of the Bankruptcy Court.

1.6 “Avoidance Actions” means (a) any and all actions that are filed or that may be filed pursuant to Bankruptcy Code sections 544, 545, 547, 548, 550 or 551, or applicable non-bankruptcy law that may be incorporated or brought under the foregoing Bankruptcy Code sections, or (b) any other similar actions or proceedings filed to recover property for or on behalf of the Estates.

1.7 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Arizona, Phoenix Division.

1.8 “Bar Date” means the date established by the Bankruptcy Court by which Proofs of Claim must have been filed with respect to such Claims, pursuant to that certain Final Order [Docket No. 364], and if not specified therein, a Final Order or the Plan.

1.9 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms and the Local Bankruptcy Rules of the Bankruptcy Court, each as amended from time to time, applicable to the Chapter 11 Cases.



1.10 “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

1.11 “Cash” means cash and cash equivalents, in legal tender of the United States of America.

1.12 “Causes of Action” means any and all present or future claims, rights, legal and equitable defenses, offsets, recoupments, actions in law or equity or otherwise, choses in action, obligation, guaranty, controversy, demand, action suits, damages, judgments, third-party claims, counter-claims, cross-claims against any Person or Entity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, existing or hereafter arising, whether based on legal or equitable relief, whether arising under the Bankruptcy Code or federal, state, common, or other law or equity, whether or not the subject of a pending litigation or proceedings on the Effective Date or thereafter, including without limitation, all other actions described in the Plan, including Section 9.4.

1.13 “Chapter 11 Cases” means the respective bankruptcy cases of (a) ECotality, Inc.; (b) Electric Transportation Engineering Corporation; (c) ECotality Stores, Inc.; (d) ETEC North, LLC; (e) The Clarity Group, Inc.; and (f) G.H.V. Refrigeration, Inc. in the Bankruptcy Court and jointly administered under Case No. 2:13-BK-16126 (MCW).

1.14 “Claim” means the same as set forth in Bankruptcy Code section 101(5) and includes all rights to payment from the Debtors.

1.15 “Claims and Noticing Agent” means Kurtzman Carson Consultants LLC, employed by the Debtors as the official claims, noticing and balloting agent in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court.

1.16 “Claims Objection Bar Date” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) one hundred eighty (180) days after the Effective Date and (b) such later period of limitation as may be specifically fixed by an order of the Bankruptcy Court.

1.17 “Committee” means the committee of unsecured creditors appointed by the United States Trustee in the Chapter 11 Cases under Bankruptcy Code section 1102.

1.18 “Compensation Claims” means Claims on account of fees for professional services rendered and expenses incurred in connection with such services by Professionals on and after the Petition Date and prior to and including the Confirmation Date.

1.19 “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

1.20 “Confirmation Date” means the date upon which the Confirmation Order is entered by the Bankruptcy Court confirming the Plan, which order becomes final and non-appealable after the Confirmation Hearing.

1.21 “Confirmation Objection Deadline” means the day that is fourteen (14) days prior to the Confirmation Hearing.

1.22 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code section 1128.

1.23 “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.

1.24 “Consummation” means “substantial consummation” as defined in Bankruptcy Code section 1101(2).

1.25 “Creditor” means a Person, firm, partnership, corporation or an Entity who has filed, or deemed to have filed, a lawful Claim against the Debtors, as provided by the Bankruptcy Code and orders of the Bankruptcy Court, and which Claim has been allowed by the Bankruptcy Court, or is deemed allowed by applicable provisions of law.

1.26 “Disclosure Statement” means that Disclosure Statement filed with and approved by the Bankruptcy Court at or prior to the Confirmation Hearing.

1.27 “Disputed” means, with respect to any Claim or Equity Interest, any (a) Claim that is listed on the Schedules as unliquidated, disputed or contingent; (b) Claim or Equity Interest as to which the Debtors or any other party in interest have interposed a timely objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court or which is otherwise disputed by the Debtors in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order; (c) any Claim evidenced by a Proof of Claim which amends a Claim scheduled by the Debtors as contingent, unliquidated, or disputed; or (d) any Claim or Equity Interest that is not an Allowed Claim or Allowed Equity Interest.

1.28 “Disputed Claims Reserve” means a fund held by the Liquidating Trust (which need not be held in a segregated bank account) for the payment of Disputed Claims that become Allowed Claims after the Effective Date, which fund shall be maintained by the Liquidating Trustee for the benefit of the Holders of Disputed Claims.

1.29 “Distribution Date” means date upon which the Liquidating Trustee will make distributions to holders of Allowed Claims entitled to receive distributions under the Plan on account of such Allowed Claims, which date shall be as soon as reasonably practicable.

1.30 “Distribution Record Date” means the record date for the purpose of determining holders of Allowed Claims entitled to receive distributions under the Plan on account of such Allowed Claims, which date shall be the Confirmation Date.

1.31 “DOE” means the United States Department of Energy.

1.32 “Effective Date” means the date upon which the Plan’s conditions to effectiveness are satisfied or waived in accordance with Section 8.1 hereof, which shall be the day Consummation occurs.

1.33 “Entity” means an “entity” as defined in Bankruptcy Code section 101(15).

1.34 “Estate” means the bankruptcy estate of any Debtor by virtue of Bankruptcy Code section 541 upon the commencement of the Chapter 11 Cases.

1.35 “Equity Interest” means, with respect to a Debtor, as of the Petition Date, any capital stock or other ownership interest in such Debtor, whether or not transferable, any option, call, warrant, or right to purchase, sell, or subscribe for an ownership interest or other equity security in such Debtor, or any redemption, conversion, exchange, voting, participation, dividend rights and liquidation preferences relating to such capital stock or other ownership interest.

1.36 “Exculpated Parties” means (a) the Debtors, (b) each director, officer, financial advisor, restructuring advisor, attorney or any other advisor employed by or serving the Debtors as of or after the Petition Date, (c) the Committee, (d) each member of the Committee solely in its capacity as a member of the Committee, and (e) the respective predecessors, successors and assigns, and current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, crisis managers, accountants, investment bankers and consultants of each of the Entities in (a)-(d).

1.37 “Final Order” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified or amended, as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, that, the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order; provided, further, that the Debtors reserve the right to waive any appeal period.

1.38 “General Unsecured Claim” means a Claim against the Debtors, which is not an Administrative Claim, Compensation Claim, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, Intercompany Claim or Section 510(b) Claim.

1.39 “Impaired” means, with respect to a Claim, or class of Claims, “impaired” within the meaning of the Bankruptcy Code section 1124.

1.40 “Intercompany Claims” means any amounts due or obligation among or between the Debtors, including without limitation intercompany receivables, intercompany investments, intercompany guarantees, contribution due to intercompany liabilities, or ownership interests of one Debtor by another Debtor.

1.41 “Interim Compensation Order” means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 337], entered on November 25, 2013, as the same may be modified by a Bankruptcy Court order approving the retention of a specific Professional or otherwise.

1.42 “Lien” means any charge against or interest in property to secure payment of a debt or performance of an obligation and includes, without limitation, any judicial lien, security interest, mortgage, deed of trust or statutory lien as defined in Bankruptcy Code section 101.

1.43 “Liquidating Trust” means the trust described in Article IV of the Plan to be established under laws of the state of Arizona that will effectuate the wind down of the Debtors and make distributions pursuant to the terms of the Plan and the Liquidating Trust Agreement.

1.44 “Liquidating Trust Agreement” means the Liquidating Trust Agreement, the form of which is attached hereto as Exhibit A and incorporated by reference herein, to be dated on or prior to the Effective Date, between the Debtors and the Liquidating Trustee, governing, among other things, the disposition of the Liquidating Trust Assets and distribution of the proceeds thereof in accordance with the Plan, and setting forth the duties and obligations of the Liquidating Trustee.

1.45 “Liquidating Trust Assets” means any and all assets of the Estates of every kind and character, wherever located, whether real or personal, tangible or intangible, as of the Effective Date, including, without limitation: (a) all Cash remaining in the possession of Debtors; (b) the proceeds from prepetition sales of assets or stock in trade of the Debtors whether or not reduced to Cash; (c) Causes of Action; (d) all rights, claims and/or assets under any and all contracts, leases and agreements (whether rejected or assumed) of the Debtors, including all rights and/or assets retained by any of the Debtors, as the sellers under their respective asset sale agreements with third-party purchasers approved by the Bankruptcy Court prior, including without limitation, the accounts receivable arising out services or the sale of products in the ordinary course of business by such Debtors prior to the closing date of their respective sales and all other rights of the Debtors, as sellers, under such asset sale agreements; (e) any proceeds of the foregoing; (f) all files, books and records relating to the Debtors’ businesses or the administration of the Plan; and (g) any other similar asset.

1.46 “Liquidating Trustee” means that Person or Entity under the Liquidating Trust Agreement responsible, as trustee of the Liquidating Trust, for implementing and carrying out the terms of the Liquidating Trust Agreement and the Plan, as selected by the Debtors and the Committee and identified in the Plan.

1.47 “OCP Order” means the *Final Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business* [Docket No. 231].

1.48 “Person” means a “person” as defined in Bankruptcy Code section 101(41).

1.49 “Petition Date” means September 16, 2013, the date each Debtor filed its petition commencing the Chapter 11 Cases.

1.50 “Plan Supplement” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, which the Debtors shall use reasonable efforts to cause to be filed seven (7) days prior to (but in no event later than) the Confirmation Objection Deadline, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, as may be amended, supplemented, or modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules.

1.51 “Priority Non-Tax Claim” means a Claim to the extent that it is of the kind described in, and entitled to priority under, Bankruptcy Code section 507(a)(3), (4), (5) or (6), but other than any Priority Tax Claim.

1.52 “Priority Tax Claim” means a Claim to the extent that it is of the kind described in, and entitled to priority under, Bankruptcy Code section 507(a)(8).

1.53 “Professional” means a Person or Entity employed by the Debtors or the Committee pursuant to a Final Order in accordance with the Bankruptcy Code sections 327, 328 or 1103.

1.54 “Proof of Claim” means a proof of claim filed by a holder of a Claim against any Debtor (as may be amended and supplemented from time to time pursuant to the Bankruptcy Code or Bankruptcy Rules) on or before the applicable Bar Date, or such other time as may be permitted by the Bankruptcy Court or agreed to by the Debtors or the Liquidating Trustee, as applicable.

1.55 “Released Parties” means, collectively: (a) the Debtors; (b) the Debtors’ current and former officers and directors; (c) the Committee; and (d) each of the foregoing entities’ respective predecessors, successors and assigns, and current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers and consultants, in each case in their capacity as such.

1.56 “Section 510(b) Claims” means any Claim against any Debtor arising from rescission of a purchase or sale of a security of any Debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under Bankruptcy Code section 502 on account of such a Claim.

1.57 “Secured” means when referring to a Claim: (a) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of the Creditor’s interest in an Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a) or (b) Allowed as such pursuant to the Plan.

1.58 “Schedules” means the schedules of assets and liabilities and the statements of financial affairs filed by each of the Debtors pursuant to the Bankruptcy Code section 521, Bankruptcy Rule 1007, and the Official Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time through the Confirmation Date in accordance with Bankruptcy Rule 1009.

1.59 “Tax Code” means the Internal Revenue Code of 1986, as amended.

1.60 “Treasury Regulations” means the regulations promulgated pursuant to the Tax Code.

1.61 “United States Trustee” means the United States Trustee for Region 14.

1.62 “Unimpaired” means, with respect to a class of Claims, a class of Claims that is not Impaired.

1.63 “Unsecured Claims Fund” means the Liquidating Trust Assets available for distribution to holders of General Unsecured Creditors by the Liquidating Trustee pursuant to the terms of the Liquidating Trust Agreement.

## **ARTICLE II.**

### **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### **A. Unclassified Claims.**

2.1 **Administrative Claims.** Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors or the Liquidating Trustee, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim will receive, in full and final satisfaction of its Allowed Administrative Claim, Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim either: (a) if such Allowed Administrative Claim is allowed as of the Effective Date, no later than forty-five (45) days after the Effective Date or as soon as reasonably practicable thereafter; (b) if the Claim is not Allowed as of the Effective Date, no later than forty-five (45) days after the date on which an order of the Bankruptcy Court allowing such Claim becomes a Final Order, or as soon thereafter as reasonably practicable thereafter; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Estates in the ordinary course of their business after the Petition Date, pursuant to the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the holder of such Allowed Administrative Claim.

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the OCP Order) or as provided herein, unless previously filed, requests for payment of Allowed Administrative Claims must be filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Allowed Administrative Claims that are required to file and serve a request for payment of such Allowed Administrative Claims that do not file and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Claims against the Debtors or their property, and such Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party by the Administrative Claims Objection Bar Date.

2.2 **Compensation Claims.** Notwithstanding any other provision of the Plan concerning Administrative Claims, any Professional seeking an award by the Bankruptcy Court of an Allowed Administrative Claim on account of Compensation Claims (a) shall no later than sixty (60) days after the Effective Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Confirmation Date and (b) shall receive, as soon as reasonably practicable after such Claim is allowed, in full settlement, satisfaction, and release of, and in exchange for, such Allowed Administrative Claim, Cash in an amount equal to the unpaid amount of such Allowed Compensation Claim in accordance with any Final Order allowing such Allowed Compensation Claim.

#### **(a) Post-Confirmation Date Fees and Expenses**

Except as otherwise specifically provided in the Plan, on and after the Confirmation Date, the Debtors or the Liquidating Trustee, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable fees and expenses incurred by Professionals on or after the Confirmation Date. Upon the Confirmation Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 and 1103 or the Interim Compensation Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors or the

Liquidating Trustee, as applicable, may pay any Professional in the ordinary course of business without any further notice, action, order or approval of the Bankruptcy Court.

2.3 **Substantial Contribution Compensation and Expenses.** Except as otherwise specifically provided in the Plan, any Person or Entity that requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b)(3), (4) or (5) must file an application and serve such application on counsel for the Debtors or the Liquidating Trustee, as applicable, and as otherwise required by the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules on or before the Administrative Claim Bar Date, or be forever barred from seeking such compensation or expense reimbursement. All rights of the Debtors, the Liquidating Trustee, the United States Trustee and all other parties in interest to object to such request are expressly reserved.

2.4 **Priority Tax Claims.** Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release and discharge of, and in exchange for, each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in Bankruptcy Code section 1129(a)(9)(C).

**B. General Rules.**

2.5 **Classification.** Pursuant to Bankruptcy Code sections 1122 and 1123, the following designates the Classes of Claims and Equity Interests under the Plan. A Claim or Equity Interest is in a particular Class for purposes of voting on, and of receiving distributions pursuant to, the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and such Claim or Equity Interest has not been paid, released or otherwise settled prior to the Effective Date. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class.

**C. Summary of Classification of Claims and Equity Interests.**

<b><u>Class</u></b>	<b><u>Designation</u></b>	<b><u>Impairment</u></b>	<b><u>Entitled to Vote</u></b>
1	Allowed Secured Claims	Unimpaired	No (deemed to accept)
2	Allowed Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
3	Allowed General Unsecured Claims	Impaired	Yes
4	Intercompany Claims	Impaired	No (deemed to reject)
5	Section 510(b) Claims	Impaired	No (deemed to reject)
6	Equity Interests	Impaired	No (deemed to reject)

**D. Classified Claims and Equity Interests.**

2.6 **Class 1 – Secured Claims.**

(a) **Classification.** Class 1 consists of all Allowed Secured Claims against the Debtors.

(b) **Treatment.** Except to the extent that a holder of an Allowed Secured Claim agrees to a less favorable treatment of its Allowed Secured Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed Secured Claim, each such holder thereof shall receive, at the option of the Debtors or Liquidating Trustee, as applicable, either: (i) payment in full in Cash of such holder's Allowed Secured Claim; (ii) reinstatement of such holder's Allowed Secured Claim; (iii) return of any collateral

subject to such holder's Allowed Secured Claim; or (iv) such other treatment rendering such holder's Allowed Secured Claim Unimpaired.

(c) Impairment and Voting. Class 1 Claims are Unimpaired and the holders thereof are not entitled to vote on the Plan.

2.7 **Class 2 – Priority Non-Tax Claims.**

(a) Classification. Class 2 consists of all Allowed Priority Non-Tax Claims against the Debtors.

(b) Treatment. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment of its Allowed Priority Non-Tax Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed Priority Non-Tax Claim, each such holder thereof shall receive, at the option of the Liquidating Trustee, either: (i) payment in full in Cash of such holder's Allowed Priority Non-Tax Claim; or (ii) such other treatment rendering such Allowed Priority Non-Tax Claim Unimpaired.

(c) Impairment and Voting. Class 2 Claims are Unimpaired and the holders thereof are not entitled to vote on the Plan.

2.8 **Class 3 – General Unsecured Claims.**

(a) Classification. Class 3 consists of all Allowed General Unsecured Claims against the Debtors.

(b) Treatment. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed General Unsecured Claim, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed General Unsecured Claim, each holder thereof shall receive Cash in an amount equal to the pro rata share of the Unsecured Claims Fund.

(c) Impairment and Voting. Class 3 Claims are Impaired and the holders thereof are entitled to vote on the Plan.

2.9 **Class 4 – Intercompany Claims.**

(a) Classification. Class 4 consists of all Intercompany Claims.

(b) Treatment. All Class 4 Claims shall be discharged, cancelled, released and extinguished as of the Effective Date without any distribution on account of such Claims.

(c) Impairment and Voting. Class 4 Claims are Impaired and the holders thereof are deemed to reject the Plan.

2.10 **Class 5 – Section 510(b) Claims.**

(a) Classification. Class 5 consists of all Section 510(b) Claims.

(b) Treatment. All Class 5 Claims shall be discharged, cancelled, released and extinguished as of the Effective Date without any distribution on account of such Claims.

(c) Impairment and Voting. Class 5 Claims are Impaired and holders thereof are deemed to reject the Plan.

2.11 **Class 6 – Equity Interests.**

(a) **Classification.** Class 6 consists of all Equity Interests.

(b) **Treatment.** All Equity Interests shall be discharged, cancelled, released and extinguished without any distribution on account of such Equity Interests.

(c) **Impairment and Voting.** Class 6 Equity Interests are Impaired and holders thereof are deemed to reject the Plan.

**E. Additional Provisions Regarding Unimpaired Claims and Subordinated Claims.**

2.12 **Special Provision Regarding Unimpaired Claims.** Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' or the Liquidating Trustee's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments asserted against Unimpaired Claims.

2.13 **Subordinated Claims.** The allowance, classification and treatment of all Allowed Claims and Allowed Equity Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Bankruptcy Code section 510(b), or otherwise. Pursuant to Bankruptcy Code section 510, the Debtors reserve the right to re-classify any Allowed Claim or Allowed Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE III.**  
**ACCEPTANCE**

3.1 **Presumed Acceptance of the Plan.** Classes 1 and 2 are Unimpaired under the Plan, and are therefore conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f).

3.2 **Presumed Rejection of the Plan.** Classes 4, 5 and 6 are Impaired under the Plan, and are conclusively presumed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g).

3.3 **Voting Classes.** Class 3 is Impaired under the Plan, and holders of Claims in Class 3 shall be entitled to vote to accept or reject the Plan.

3.4 **Deemed Acceptance if No Votes Cast.** If no holders of Claims eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such Claims in such Class.

3.5 **Elimination of Vacant Classes.** Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to Bankruptcy Code section 1129(a)(8).

3.6 **Cramdown.** The Debtors shall request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). The Debtors reserve the right to modify the Plan to the extent, if any, that confirmation pursuant to Bankruptcy Code section 1129(b) requires modification to the Plan.

**ARTICLE IV.**  
**MEANS FOR IMPLEMENTATION OF PLAN**

4.1 **Liquidating Trust.** Distributions to holders of Allowed Claims (including Compensation Claims) contemplated under the Plan shall be funded by the proceeds of Liquidating Trust Assets.



After the payment or reservation for, as applicable, the expenses of administering the Liquidating Trust, including the winding down and closing of the Chapter 11 Cases (including with respect to any fees and expenses incurred by any Professionals after the Confirmation Date), the fees and expenses of the Liquidating Trustee and its retained professionals, all Allowed Administrative Claims, Allowed Compensation Claims, Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Priority Non-Tax Claims and appropriate reserves, and any remaining assets shall be used to fund the Unsecured Claims Fund..

(a) Creation. On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement, the terms of which shall be incorporated herein by reference. As of the Effective Date, all of the Liquidating Trust Assets, which shall include the Remaining Assets (as defined in the Disclosure Statement), shall be transferred to the Liquidating Trust, pursuant to the terms of the Liquidating Trust Agreement. The Liquidating Trust shall be established for the sole purpose of liquidating and distributing the Liquidating Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d).

(b) Dissolution of the Debtors. As of the Effective Date, and without the need for any further order of the Bankruptcy Court, action, formality or payment of any fees which might otherwise be required under applicable non-bankruptcy laws, the Debtors shall be deemed dissolved without the need for any filings with the secretary of state or other governmental official in each Debtor's respective state of incorporation or organization; provided, however, that notwithstanding the dissolution of the Debtors, the Liquidating Trustee shall be authorized and empowered to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of and consummate the Plan, including, without limitation, the Liquidating Trust Agreement and, to the extent that any Debtor's continued existence is necessary for the realization or liquidation of any asset or defense of any Claim, such Debtor shall be deemed to continue to exist solely for such purpose.

(c) Employment and Compensation of Professionals. In accordance with the Liquidating Trust Agreement, the Liquidating Trust may employ such counsel (which may include one or more of the same counsel employed by either the Debtors or the Committee), advisors and other professionals (which may include one or more of the same Professionals employed by either the Debtors or the Committee) selected by the Liquidating Trustee that the Liquidating Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court. The Liquidating Trust's professionals shall be compensated at their respective standard hourly rates as agreed to by the Liquidating Trustee, without further motion, application, notice, or other order of the Bankruptcy Court. The fees and expenses of the Liquidating Trust's professionals shall be satisfied out of the Liquidating Trust Assets.

#### 4.2 Liquidating Trustee.

(a) Appointment. The Liquidating Trustee shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing or other order of the Bankruptcy Court. The Debtors hereby recommend that the initial Liquidating Trustee shall be Carolyn Johnsen, which recommendation is acceptable to the Committee. Ms. Johnsen has served as counsel to the Committee and, as a result, is knowledgeable about the Debtors, the Chapter 11 Cases and the Remaining Assets. For further information regarding Ms. Johnsen's qualifications to serve as the Liquidating Trustee, please refer to Exhibit C of the Disclosure Statement. In the event Ms. Johnsen does not serve as Liquidating Trustee for some reason, the Debtors reserve the right to select a Person or Entity to serve as the Liquidation Trustee, which selection shall be reasonably acceptable to the Committee.

(b) Duties. As more fully described in the Liquidating Trust Agreement, the Liquidating Trustee shall have the responsibility for administering the Liquidating Trust, maintaining applicable reserves, liquidating the Liquidating Trust Assets, and making distributions under the Plan.

(c) No Further Approvals Required/Transfer of Liquidating Trust Assets. In performance of its duties hereunder, the Liquidating Trustee shall have the rights and powers of a debtor in possession under Bankruptcy Code section 1107, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of the Plan. On and after the Effective Date, the Liquidating Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of the Plan, including the transfer of

any Liquidating Trust Assets retained by the Liquidating Trust, except as explicitly set forth in the Liquidating Trust Agreement. As further set forth in the Liquidating Trust Agreement, without limitation of the foregoing, the Liquidating Trustee shall be authorized pursuant to this Plan to transfer any or all of the Liquidating Trust Assets without necessity of any further notice or approval of the Bankruptcy Court and/or under any applicable state or federal law. This provision shall be subject in its entirety to the Liquidating Trust Agreement.

4.3 **Substantive Consolidation.** The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates into a single consolidated Estate. If the Estates are substantively consolidated, then, immediately upon the Effective Date, all of the Debtors' assets and liabilities shall be consolidated into a single entity. All of the Creditors of each of the Debtors shall become the Creditors of the consolidated entity. Claims shall be paid according to the Classification of Claims set forth in Article II herein as if the Claims were Claims against the consolidated entity. Any and all Intercompany Claims shall be extinguished pursuant to the settlement set forth in this Plan. Any Claim against a Debtor arising from a guarantee of a Claim against another consolidated Debtor shall be merged and eliminated. If any Creditor claims an interest in the assets of one of the Debtors due to such indebtedness, such as a security interest or a blanket lien, such Creditor's interest shall extend only to the assets that can be shown to belong to such Debtor.

The basis for substantive consolidation of the Debtors is based on two authorities: first, Bankruptcy Code section 1123(a)(5)(C)<sup>1</sup> and, second, the equitable judicial doctrine set forth recently in *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 (9th Cir. 2000). Adopting the Second Circuit test, the test for substantive consolidation in the Ninth Circuit is a disjunctive two-factor analysis of: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." *In re Reider*, 31 F.3d 1102, 1108 (11th Cir. 1994) (citing *In re Augie/Restivo*, 860 F.2d 515, 518 (2d Cir. 1988)). The presence of either factor is a sufficient basis to order substantive consolidation." *Bonham* at 766.

The court further elaborated on the factors:

The first factor, reliance on the separate credit of the entity, is based on the consideration that lenders "structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *In re Augie/Restivo*, 860 F.2d at 518-19. Consolidation under the second factor, entanglement of the debtor's affairs, is justified only where "the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors" or where no accurate identification and allocation of assets is possible. *Id.* at 519.

229 F.3d at 766

As may be observed, the factors are disjunctive. Satisfying either factor is sufficient to make substantial consolidation appropriate.

The Debtors believe that multiple facts, practical considerations and the Debtors' prepetition operations and financial affairs support substantive consolidation of the Debtors especially in light of the potentially significant costs associated with disentanglement and the relatively limited amount of Cash available for potential distribution. Prior to the Petition Date, and through the sale of substantially all of the Debtors' assets, Debtor ECOTality, Inc. acted as the sole manager and administrator for all of the Debtors. All of the Debtors had a single headquarters and over-lapping upper-level management, officers and directors. The Debtors shared and conducted business through a centralized cash management system and all monies were ultimately controlled a single treasury function. The Debtors also filed consolidated tax returns. Moreover, the proceeds received as a result of the sales of

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<sup>1</sup> Bankruptcy Code section 1123(a)(5)(C) provides that "... a plan shall ... provide adequate means for the plan's implementation, such as ... merger or consolidation of the debtor with one or more persons ..." 11 U.S.C. § 1123.

the Debtors' assets constitute the primary source of distributions to all Creditors under the Plan, cannot be allocated among individual Estates in a meaningful manner. Finally, substantive consolidation will avoid the costs and delays that could result from attempting to confirm and consummate six separate plans of liquidation especially given the limited amount of Cash available for distributions to Creditors.

In the event that the Bankruptcy Court does not order such deemed substantive consolidation of the Debtors, then except as specifically set forth in the Plan (a) nothing in the Plan or the Disclosure Statement shall constitute or be deemed to constitute an admission that one of the Debtors is subject to or liable for any Claim against any other Debtor, (b) Claims against multiple Debtors shall be treated as separate Claims against each applicable Debtor for all purposes (including, without limitation, distributions and voting) and such Claims shall be administered as provided in the Plan, (c) the Debtors shall not, nor shall they be required to, resolicit votes with respect to the Plan and (d) the Debtors may seek confirmation of the Plan as if the Plan is a separate Plan for each of the Debtors.

4.4 **Cancellation of Notes, Instruments, and Outstanding Equity Interests.** On the Effective Date, except as otherwise provided for in the Plan or any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, all agreements, stock, instruments, certificates and other documents in respect of the Equity Interests shall be cancelled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released and discharged.

4.5 **Cancellation of Liens.** On the Effective Date, any Lien securing any Claim shall be deemed released, and the holder of such Claim shall be authorized and directed to release any collateral or other property of any Debtor held by such holder and to take such actions as may be requested by the Debtors or the Liquidating Trustee, as applicable, to evidence the release of such Lien, including the execution, delivery and filing or recording of such releases as may be requested by the Debtors or the Liquidating Trustee, as applicable.

4.6 **Exemption from Certain Transfer Taxes and Recording Fees.** To the fullest extent permitted by Bankruptcy Code section 1146(a), any transfer from a Debtor to the Liquidating Trustee or to any entity under, pursuant to, in contemplation of, or in connection with the Plan or through: (a) the issuance, distribution, transfer or exchange of any debt, securities or other interest in the Debtors; (b) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment or recording of any lease or sublease; or (d) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles, or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

4.7 **No Further Approvals.** The transactions contemplated by the Plan shall be approved and effective as of the Effective Date without the need for any further state or local regulatory approvals or approvals by any non-Debtor parties, and without any requirement for further action by the Debtors or the Liquidating Trustee, as applicable.

4.8 **Dissolution of Committee.** The Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code section 1103 and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Committee shall be dissolved and the Committee's members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's Professionals shall terminate.

4.9 **Pre-Effective Date Injunctions or Stays.** All injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for in the Chapter 11 Cases pursuant to Bankruptcy Code

sections 105 or 362 or otherwise that are in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

**ARTICLE V.**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

5.1 **Rejection and Repudiation of Executory Contracts and Unexpired Leases.** On the Effective Date, all executory contracts and unexpired leases shall be deemed rejected or repudiated pursuant to Bankruptcy Code section 365 other than those executory contracts or unexpired leases that: (a) previously were assumed or rejected by the Debtors; (b) are otherwise addressed in the Confirmation Order; (c) are otherwise addressed in the Plan; or (d) are the subject of a motion to reject such executory contracts or unexpired leases, as applicable, that is pending on the Effective Date, regardless of whether the requested effective date of such rejection is on or after the Effective Date.

5.2 **Claims Based on Rejection or Repudiation of Executory Contracts and Unexpired Leases.** If the rejection or repudiation of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the Debtors or their properties, or any of their interests in properties as agent, successor or assign, unless a Proof of Claim is filed with the Claims and Noticing Agent and served upon counsel to the Liquidating Trustee within thirty (30) days after the earlier of (i) entry of the Confirmation Order and (ii) the effective date of rejection or repudiation of the executory contract or unexpired lease. The Debtors shall give notice of the bar date established by this Section 5.2 to the non-Debtor counterparties to the executory contracts and unexpired leases by service of the Plan, the Confirmation Order, or otherwise. Unless otherwise provided herein, the Liquidating Trustee shall object to such Claims on or before the Claims Objection Bar Date.

5.3 **Termination of All Employee, Retiree and Workers' Compensation Benefits.** All existing employee benefits (including, without limitation, workers' compensation benefits, health care plans, disability plans, severance benefit plans, incentive plans, and life insurance plans) and retiree benefits (as such term is defined under Bankruptcy Code section 1114(a)) not previously terminated by the Debtors shall be terminated on or before the Effective Date, except as otherwise expressly provided in the Confirmation Order.

5.4 **Survival of Certain Indemnification Obligations.** Any obligations of the Debtors pursuant to their corporate charters and bylaws or agreements, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse, or limit the liability of any Person or Entity pursuant to the Debtors' certificates of incorporation, bylaws, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Person or Entity based upon any act or omission related to such Person or Entity's service with, for, or on behalf of the Debtors prior to the Effective Date with respect to all past, present and future actions, suits, and proceedings relating to the Debtors shall continue as obligations of the Liquidating Trust only in accordance with this Section 5.4, and shall survive confirmation of the Plan, irrespective of whether any such defense, indemnification, reimbursement, or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; provided, however, that all monetary obligations under this Section 5.4 shall be limited solely to available insurance coverage and neither the Liquidating Trust, the Liquidating Trustee nor any of the Liquidating Trust Assets shall be liable for any such obligations under any circumstance. Any Claim based on the Debtors' obligations set forth in this Section 5.4 shall not be subject to any objection by reason of Bankruptcy Code section 502(e)(1)(B). This Section 5.4 shall not apply to or cover any Claims, suits or actions against a Person or Entity that result in a final order determining that such Person or Entity is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of the duty of loyalty.

**ARTICLE VI.**  
**PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS**

6.1 **Prosecution of Objections to Claims on and after the Effective Date.**

(a) On and after the Effective Date, objections to, and requests for estimation of, any Claims, including, without limitation, any Claims scheduled by the Debtors in the Schedules, may be interposed

and prosecuted only by the Liquidating Trust and Liquidating Trustee. Such objections and requests for estimation shall be served on the respective holder of such Claim and filed with the Bankruptcy Court on or before the later of (i) Claims Objection Bar Date and (ii) such other date as may be fixed by the Bankruptcy Court upon a motion filed by the Liquidating Trustee and served only upon the United States Trustee and any party that has filed a notice of appearance and request for service of notices and papers on or after the Effective Date.

(b) On the Effective Date, all pending objections to and requests for estimation of any Claims will vest in the Liquidating Trust.

(c) The Liquidating Trustee shall be authorized to resolve all Disputed Claims by withdrawing or settling objections thereto, or by litigating to judgment in the Bankruptcy Court, or such other court having competent jurisdiction, the validity, nature and/or amount thereof. If the Liquidating Trustee agrees with the holder of a Disputed Claim to compromise, settle and/or resolve a Disputed Claim by granting such holder an Allowed Claim, then the Liquidating Trustee may compromise, settle and/or resolve such Disputed Claim without Bankruptcy Court approval.

6.2 **Estimation of Claims**. The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c) regardless of whether the Debtors or the Liquidating Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

6.3 **No Distributions Pending Allowance**. Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such disputed portion; provided, however, that the Liquidating Trustee may, at its discretion and in accordance with the Liquidating Trust Agreement, pay any undisputed portion of a Disputed Claim in accordance with the terms of the Plan or the Liquidating Trust Agreement, as applicable. To the extent that all or a portion of a Disputed Claim is disallowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed and any distribution withheld pending the resolution of such Claim shall be reallocated *pro rata* to the holders of Allowed Claims in the same Class.

6.4 **Distributions After Allowance**. To the extent that a Disputed Claim becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan, the Liquidating Trust Agreement and the Confirmation Order. As soon as practicable after the date that an order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under the Plan.

6.5 **Disallowed Claims**. Any Claim held by a Person or Entity against whom any Debtor or the Liquidating Trust has commenced a proceeding asserting a Cause of Action under Bankruptcy Code section 542, 543, 544, 545, 547, 548, 549, 550, 551 and/or 553, shall be deemed disallowed pursuant to Bankruptcy Code section 502(d) and the holder of such Claim shall not be entitled to vote to accept or reject the Plan. Claims that are deemed disallowed pursuant to this Section 6.5 shall continue to be disallowed for all purposes until such Cause of Action has been settled or resolved by Final Order and any sums due to the Debtors or the Liquidating Trust, as applicable, from such party have been paid.

## **ARTICLE VII.** **DISTRIBUTIONS**

7.1 **Manner of Payment and Distributions under the Plan.** All distributions under the Plan shall be made by the Liquidating Trustee pursuant to the terms of the Liquidating Trust Agreement, the Plan and the Confirmation Order.

(a) **Distributions to Holders of Allowed Claims.** Subject to the conditions set forth in the Liquidating Trust Agreement, the Liquidating Trustee will make distributions on account of Allowed Claims as of the Distribution Date or otherwise in accordance with the provisions of Article II hereof or otherwise in the Plan or the Confirmation Order. The Liquidating Trustee will make subsequent distributions to a holder of such Allowed Claim within a reasonable period of time after such Claim becomes Allowed. Payments of Cash by the Liquidating Trustee pursuant to the Plan and the Liquidating Trust Agreement may be by check drawn on a domestic bank and shall be made to the address of the holder of such Claim as most recently indicated on or prior to the Effective Date in the Debtors' books and records. At the option of the Liquidating Trustee, payments may be made by wire transfer from a bank.

7.2 **Interest and Penalties on Claims.** Unless otherwise specifically provided for in the Plan, the Liquidating Trust Agreement, the Confirmation Order, required by applicable bankruptcy law or necessary to render a Claim Unimpaired, postpetition interest and penalties shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest and penalties accruing on or after the Petition Date through the date such Claim is satisfied in accordance with the terms of the Plan.

7.3 **Record Date for Distributions.** None of the Debtors or the Liquidating Trustee will have any obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and make distributions only to those holders of Allowed Claims that are holders of such Claims as of the close of business on the Distribution Record Date. The Debtors and the Liquidating Trustee shall be entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the official claims register as of the close of business on the Distribution Record Date.

7.4 **Withholding and Reporting Requirements.** In connection with the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities and all distributions hereunder shall be subject to such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim that is to receive a distribution hereunder shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any government unit, including income, withholding and other tax obligations, on account of such distribution. The Liquidating Trustee has the right, but not the obligation, not to make a distribution until such holder has made arrangements satisfactory to the Liquidating Trustee for payment of any such tax obligations. The Liquidating Trustee may require, as a condition to the receipt of a distribution, that the holder of an Allowed Claim complete the appropriate Form W-8 or Form W-9, as applicable to each holder. If such holder fails to comply with such request within one year, such distribution shall be deemed an unclaimed distribution.

7.5 **Setoffs.** Except as provided under the Plan, the Debtors and/or the Liquidating Trustee may, but shall not be required to, set off against any Claim and the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtors may have against the holder of a Claim, but neither the Debtors' or Liquidating Trustee's failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claim the Debtors or the Liquidating Trustee, as applicable, may have against such holder of a Claim.

7.6 **Allocation of Plan Distributions Between Principal and Interest.** To the extent that any Allowed Claim entitled to distribution under the Plan consists of indebtedness and accrued but unpaid interest thereon, such distributions shall, for all income tax purposes, be allocated first to the principal amount of the Claim

(as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

7.7 **Undeliverable or Returned Distributions.** If any Allowed Claim distribution is returned to the Liquidating Trustee as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine the correct address of the holder of such Claim. If such reasonable efforts are unsuccessful, no further distributions shall be made to the holder of such Claim unless and until the Liquidating Trustee is notified in writing of such holder's then current address. Upon receipt by the Liquidating Trustee, returned Cash shall not earn any interest or be entitled to any dividends or other accruals of any kind. Any holder of an Allowed Claim that does not assert a Claim pursuant to this Section 7.7 for a returned distribution within one (1) year after the Effective Date shall be forever barred from asserting any such Claim against the Debtors or their property or other property transferred pursuant to the Plan and Liquidating Trust Agreement.

7.8 **Fractional Distributions.** No fractional dollars shall be distributed. Where fractional dollars would otherwise be called for, the actual issuance shall reflect a rounding down of such fraction to the nearest whole dollar.

7.9 **Miscellaneous Distribution Provisions.**

(a) **Foreign Currency Exchange Rate.** Except as specifically provided for in the Plan or an order of the Bankruptcy Court, as of the Effective Date, any Claim asserted in currency other than U.S. dollars automatically shall be deemed converted to the equivalent U.S. dollar value using Bank of America's noon spot rate as of the Petition Date for all purposes under the Plan, including voting, allowance and distribution.

(b) **Distributions on Non-Business Days.** Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

(c) **Partial Distributions on Disputed Claims.** The Debtors or the Liquidating Trustee, as applicable, may, but are not required to, make partial distributions to holders of Disputed Claims for the amount of the undisputed portion of such holder's Disputed Claim.

(d) **Disputed Payments.** If any dispute arises as to the identity of the holder of an Allowed Claim entitled to receive any distribution under the Plan, the Liquidating Trustee may retain such distribution until its disposition is determined by a Final Order or written agreement among the interested parties to such dispute.

(e) **Post-Consummation Effect of Evidence of Claims or Equity Interests.** Except as otherwise provided herein, notes, stock certificates, membership certificates, unit certificates and other evidence of Claims against, or Equity Interests in, the Debtors shall, effective on the Effective Date, represent only the right to participate in the distributions contemplated by the Plan and shall not be valid or effective for any other purpose.

(f) **Disgorgement.** To the extent that any property, including Cash, is distributed to a Person or Entity on account of a Claim that is not an Allowed Claim, such property shall be held in trust for and shall promptly be returned to the Liquidating Trustee.

**ARTICLE VIII.**  
**CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN**

8.1 **Conditions to the Effective Date.** Consummation of the Plan and the occurrence of the Effective Date are subject to satisfaction of the following conditions:

(a) The Bankruptcy Court shall have entered the Confirmation Order, and such Confirmation Order shall have become a Final Order;

(b) No request for revocation of the Confirmation Order under Bankruptcy Code section 1144 has been made, or, if made, remains pending; and

(c) All documents necessary to implement the transactions contemplated by this Plan are in form and substance acceptable to the Debtors.

8.2 **Waiver of Condition.** The conditions set forth in Section 8.1 of the Plan, other than the condition requiring that the Confirmation Order shall have been entered by the Bankruptcy Court, may be waived in whole or in part by the Debtors.

8.3 **Notice of Effective Date.** The Debtors shall file with the Bankruptcy Court a notice of the occurrence of the Effective Date within a reasonable period of time after the conditions in Section 8.1 of the Plan have been satisfied or waived pursuant to Section 8.2 of the Plan, and the Effective Date has occurred.

8.4 **Order Denying Confirmation.** If the Plan is not Consummated, then nothing contained in the Plan shall (a) constitute a waiver or release of any Claims against or Equity Interests in the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against, or Equity Interest in, the Debtors; (c) prejudice in any manner any right, remedy or Claim of the Debtors; (d) be deemed an admission against interest by the Debtors; or (e) constitute a settlement, implicit or otherwise, of any kind whatsoever.

## **ARTICLE IX.**

### **EFFECT OF THE PLAN ON CLAIMS AND EQUITY INTERESTS**

#### **9.1 Discharge of Claims and Termination of Equity Interests.**

(a) As of the Effective Date, except as otherwise explicitly provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Equity Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims and satisfaction or termination of all Equity Interests. Except as otherwise provided in the Plan or the Confirmation Order, Confirmation shall, as of the Effective Date: (i) discharge the Debtors from all Claims or other debts that arose before the Effective Date, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), in each case whether or not (w) a Proof of Claim is filed or deemed filed pursuant to Bankruptcy Code section 501, (x) a Claim based on such debt is Allowed pursuant to Bankruptcy Code section 502, (y) the holder of a Claim based on such debt has accepted the Plan or (z) such Claim is listed in the Schedules; and (ii) satisfy, terminate or cancel all Equity Interests and other rights of equity security holders in the Debtors.

(b) As of the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Persons and Entities shall be precluded from asserting against the Debtors, or their respective successors or property, any other or further Claims, demands, debts, rights, causes of action, liabilities or equity interests based upon any act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order will be a judicial determination, as of the Effective Date, of a discharge of all such Claims and other debts and liabilities against the Debtors and satisfaction, termination or cancellation of all Equity Interests and other rights of equity security holders in the Debtors, pursuant to Bankruptcy Code sections 524 and 1141, and such discharge will void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

#### **9.2 Injunctions.**

(a) Except as otherwise provided in the Plan, the Liquidating Trust Agreement or the Confirmation Order, all Persons or Entities who have held, hold or may hold Claims, Equity Interests, Causes of Action or liabilities that: (i) are subject to compromise and settlement pursuant to the terms of the Plan; (ii) have been released pursuant to Section 9.3 of the Plan; (iii) are subject to exculpation pursuant to



Section 9.5 of the Plan (but only to the extent of the exculpation provided in Section 9.5 of the Plan); or (iv) are otherwise stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner any action or other proceeding, including on account of any Claims, Equity Interests, Causes of Action or liabilities that have been compromised or settled against the Debtors or any Person or Entity so released or exculpated (or the property or estate of any Person or Entity, directly or indirectly, so released or exculpated) on account of or in connection with or with respect to any released, settled, compromised, or exculpated Claims, Equity Interests, Causes of Action or liabilities.

9.3 Releases.

(a) Debtor Releases. Notwithstanding anything contained herein to the contrary, on the Confirmation Date and effective as of the Effective Date and to the fullest extent authorized by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged by the Debtors and their Estates from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or any related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

(b) Releases by Holders of Claims and Equity Interests. Except for any obligation, claim, cause of Action or liability arising expressly under the Plan or reserved by any Person or Entity pursuant to the Plan, on the Confirmation Date and effective as of the Effective Date and to the fullest extent authorized by applicable law, holders of Claims and Equity Interests shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or any related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

9.4 Limitation on Releases. Notwithstanding any other provision of this Article IX, nothing in this Article shall be deemed to release the Debtors' current and former officers and directors, shareholders, affiliates, subsidiaries, principals, employees, agents, managers, trustees, partners, members,

professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers and consultants from any claim related to the prepetition conduct with respect to the prepetition operations and affairs of the Debtors. Such claims include, without limitation, claims for deepening insolvency; breach of fiduciary duties; misrepresentation, negligence, and other misconduct; aiding and abetting such misconduct; fraudulent conveyances and preference recoveries.

9.5 **Exculpation.** Notwithstanding anything contained herein to the contrary, on the Confirmation Date and effective as of the Effective Date and to the fullest extent authorized by applicable law, none of the Exculpated Parties, shall have or incur any liability for any claim, cause of action, or other assertion of liability for any act taken or omitted in connection with, or arising out of, the Chapter 11 Cases or the negotiation, formulation, preparation, administration, consummation and/or implementation of the Plan, or any contract, instrument, document, or other agreement entered into pursuant thereto through the Effective Date; provided that the foregoing shall not affect the liability of any Person or Entity that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan and administration thereof.

9.6 **Retention and Enforcement and Release of Causes of Action.** Except as otherwise provided in the Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b), the Debtors, their Estates and the Liquidating Trust expressly reserve all rights to retain and prosecute any and all of the Causes of Action including, without limitation, the Causes of Action identified in **Exhibit B** attached hereto (the “Retained Causes of Action”). The Debtors shall have, prior to the Effective Date, and the Liquidating Trustee shall have, on or after the Effective Date, sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting and otherwise administering (or decline to do any of the foregoing) any or all of the Retained Causes of Action pursuant to the terms of the Plan and the Liquidating Trust Agreement. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to any or all of the Retained Causes of Action upon, after, or as a consequence of Confirmation or the occurrence of the Effective Date.

## **ARTICLE X. MISCELLANEOUS PROVISIONS**

10.1 **Retention of Jurisdiction.** Following the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising from or relating to the Chapter 11 Cases to the fullest extent of applicable law, including, without limitation:

(a) To determine the validity under any applicable law, allowability, classification and priority of Claims and Equity Interests upon objection, or to estimate, pursuant to Bankruptcy Code section 502(c), the amount of any Claim that is, or is anticipated to be, contingent or unliquidated as of the Effective Date;

(b) To construe and to take any action authorized by the Bankruptcy Code and requested by the Liquidating Trustee or any other party in interest to enforce the Plan and the documents and agreements filed and/or executed in connection with the Plan, including the Liquidating Trust Agreement, issue such orders as may be necessary for the implementation, execution and consummation of the Plan, and to ensure conformity with the terms and conditions of the Plan, such documents and agreements and other orders of the Bankruptcy Court, notwithstanding any otherwise applicable non-bankruptcy law;

(c) To determine any and all applications for allowance of Compensation Claims, and to determine any other request for payment of Administrative Claims;

(d) To determine all matters that may be pending before the Bankruptcy Court on or before the Effective Date;

(e) To resolve any dispute regarding the implementation or interpretation of the Plan, the Liquidating Trust Agreement or any related agreement or document that arises at any time before the Chapter 11 Cases are closed (or if the Chapter 11 Cases are reopened), including the determination, to the extent a dispute arises, of the entities entitled to a distribution within any particular Class of Claims;

(f) To determine all applications, adversary proceedings, contested matters and other litigated matters, that were brought or that could have been brought in the Bankruptcy Court on or before the Effective Date over which this Bankruptcy Court otherwise has jurisdiction;

(g) To determine matters concerning local, state and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146, and to determine any tax claims that may arise against the Liquidating Trustee as a result of the transactions contemplated by the Plan;

(h) To modify the Plan pursuant to Bankruptcy Code section 1127 or to remedy any apparent nonmaterial defect or omission in the Plan, or to reconcile any nonmaterial inconsistency in the Plan so as to carry out its intent and purposes; and

(i) To hear any other matter not inconsistent with the Bankruptcy Code.

10.2 **Terms Binding.** Upon the occurrence of the Effective Date, all provisions of the Plan, including all agreements, instruments and other documents filed in connection with the Plan and executed by the Debtors or the Liquidating Trustee, as applicable, in connection with the Plan, shall be binding upon the Debtors, the Liquidating Trustee, all holders of Claims and Equity Interests and all other Persons and Entities that are affected in any manner by the Plan. All agreements, instruments and other documents filed in connection with the Plan shall have full force and effect, and shall bind all parties thereto, subject to the occurrence of the Effective Date, upon the entry of the Confirmation Order, whether or not such exhibits actually shall be executed by parties other than the Debtors or the Liquidating Trustee, or shall be issued, delivered or recorded on the Effective Date or thereafter. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such entity.

10.3 **Severability.** If, before Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) non-severable and mutually dependent.

10.4 **Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006 will apply.

10.5 **Confirmation Order and Plan Control.** Except as otherwise provided in the Plan, in the event of any inconsistency between the Plan and the Disclosure Statement, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

10.6 **Incorporation by Reference.** The Plan Supplement is incorporated herein by reference.

10.7 **Modifications to the Plan.** The Debtors may amend or modify the Plan, the Plan Supplement, and any schedule or supplement hereto, at any time prior to the Effective Date in accordance with the Bankruptcy Code, Bankruptcy Rules or any applicable court order. Subject to certain restrictions and requirements

set forth in Bankruptcy Code section 1127 and Bankruptcy Rule 3019, the Debtors expressly reserve their rights to alter, amend or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. A holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or supplemented, if the proposed alteration, amendment, modification or supplement does not materially and adversely change the treatment of the Claim or Equity Interest of such holder.

10.8 **Revocation, Withdrawal or Non-Consummation.** The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date. If the Debtors revoke or withdraw the Plan prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), and any document or agreement executed pursuant to the Plan, shall be null and void; provided, however, that all orders of the Bankruptcy Court and all documents executed pursuant thereto, except the Confirmation Order, shall remain in full force and effect. In such event, nothing contained herein, and no acts taken in preparation for consummation of the Plan, shall be deemed to constitute a waiver or release of any Claims by or against any of the Debtors or any other Person or Entity, to prejudice in any manner the rights of any of the Debtors or any Person or Entity in any further proceedings or to constitute an admission of any sort by any of the Debtors or any other Person or Entity.

10.9 **Courts of Competent Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan or in the Chapter 11 Cases, such abstention, refusal or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

10.10 **Payment of Statutory Fees.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date, and as appropriate, thereafter.

10.11 **Notice.** All notices, requests and demands to or upon the Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Telephone: (310) 229-1000  
Facsimile: (310) 229-1001  
Attention: David P. Simonds  
Arun Kurichety

- and -

Parker Schwartz, PLLC  
7310 N. 16<sup>th</sup> Street, Suite 330  
Phoenix, Arizona 85020  
Telephone: (602) 282-0476  
Facsimile: (602) 282-0478  
Attention: Jared Parker

- and -

Dickinson Wright PLLC  
1850 North Central Avenue, Suite 1400

Phoenix, Arizona 85004  
Telephone: (602) 285-5040  
Attention: Carolyn J. Johnsen

10.12 **Reservation of Rights.** The filing of the Plan, the Disclosure Statement, any statement or provision contained in the Plan, or the taking of any action by the Debtors or the Liquidating Trustee, as applicable, with respect to the Plan, shall not be deemed to be an admission or waiver of any rights of the Debtors or the Liquidating Trustee, as applicable, with respect to any holders of Claims against or Equity Interests in the Debtors.

10.13 **No Waiver.** Neither the failure of a Debtor to list a Claim or Equity Interest in the Debtors' Schedules, the failure of a Debtor to object to any Claim, Administrative Claim or Equity Interest for purposes of voting, the failure of a Debtor to object to a Claim, Administrative Claim or Equity Interest prior to the Confirmation Date or the Effective Date, nor the failure of a Debtor to assert a Retained Cause of Action prior to the Confirmation Date or the Effective Date shall, in the absence of a legally-effective express waiver or release executed by the Debtor with the approval of the Bankruptcy Court, if required, and with any other consents or approvals required under the Plan, be deemed a waiver or release of the right of a Debtor or its respective successors, either before or after solicitation of votes on the Plan, the Confirmation Date or the Effective Date, to (a) object to or examine such Claim, Administrative Claim or Equity Interest, in whole or in part, or (b) retain or either assign or exclusively assert, pursue, prosecute, utilize, or otherwise act or enforce any Retained Cause of Action against the holder of such Claim, Administrative Claim or Equity Interest.

Dated: July 1, 2014

ECotality, Inc.  
Electric Transportation Engineering Corporation  
ECotality Stores, Inc.  
ETEC North, LLC  
The Clarity Group, Inc.  
G.H.V. Refrigeration, Inc.

By: /s/ Susie Herrmann  
Name: Susie Herrmann  
Title: Chief Financial Officer

**Exhibit A**

**Liquidating Trust Agreement**

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## LIQUIDATING TRUST AGREEMENT

ECOTALITY CONSOLIDATED LIQUIDATING TRUST AGREEMENT, dated as of \_\_\_\_\_, 2014 (the "Liquidating Trust Agreement"), by and among the Debtors, as settlor, and \_\_\_\_\_ (the "Liquidating Trustee"), as trustee of ECOTALITY Consolidated Liquidating Trust (the "Liquidating Trust") referred to herein, hereby establish the Liquidating Trust, pursuant to the provisions set forth herein.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Joint Chapter 11 Plan of Liquidation* (as confirmed, the "Plan").

### Background

- A. On September 16, 2013, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- B. On or about July 1, 2014, the Debtors filed their Plan and Disclosure Statement.
- C. The Disclosure Statement was approved on [\_\_\_\_\_].
- D. On or about [\_\_\_\_\_], the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan.
- E. The Plan provides that, on the Effective Date, the Liquidating Trust shall be created and all of the Liquidating Trust Assets shall be transferred to the Liquidating Trust, pursuant to the terms of this Liquidating Trust Agreement, solely for distribution in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order.
- F. The Liquidating Trust is being created pursuant to this Liquidating Trust Agreement for the sole purpose of administering and liquidating the Liquidating Trust Assets and distributing proceeds thereof (the "Liquidating Trust Proceeds") for the benefit of holders of Allowed Claims (the "Liquidating Trust Beneficiaries"), in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order.
- G. The Liquidating Trust is intended to qualify as a liquidating trust for U.S. federal income tax purposes within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" for U.S. federal income tax purposes, pursuant to the provisions of Subpart E of Subchapter J of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "IRC"), and to be

exempt from the requirements of the Investment Company Act of 1940 pursuant, *inter alia*, to Sections 7(a) and 7(b) thereof.

H. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to this Liquidating Trust Agreement intend that the Liquidating Trustee take any action deemed necessary to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Section 7704 of the IRC), including, if necessary, creating or converting the Liquidating Trust into a Delaware limited liability partnership or limited liability company.

I. The Liquidating Trustee shall have all powers necessary to implement the provisions of this Liquidating Trust Agreement and administer the Liquidating Trust, including, without limitation, the power to (i) prosecute for the benefit of the Liquidating Trust Beneficiaries through counsel and other professionals selected by the Liquidating Trustee any causes of action that may, from time to time, be held by the Liquidating Trust; (ii) preserve, maintain and liquidate the Liquidating Trust Assets; (iii) distribute the Liquidating Trust Proceeds to the Liquidating Trust Beneficiaries; and (iv) otherwise perform the functions and take the actions provided for in this Liquidating Trust Agreement or permitted in the Plan or in any other agreement executed pursuant to the Plan.

J. **NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the Debtors and the Liquidating Trustee agree as follows:

## **ARTICLE I**

### **DECLARATION OF TRUST**

I.1 Creation of Trust. The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Liquidating Trust, which shall bear the name “ECOtality Consolidated Liquidation Trust.” In connection with the exercise of the Liquidating Trustee’s power hereunder, the Liquidating Trustee may use this name or such variation thereof as the Liquidating Trustee sees fit.

I.2 Purpose of Liquidating Trust. The purpose of this Liquidating Trust Agreement is to implement the Plan on behalf, and for the benefit, of the Liquidating Trust Beneficiaries by serving as a mechanism for liquidating and converting to Cash the Liquidating Trust Assets and transferring the Liquidating Trust Proceeds to the Liquidating Trust Beneficiaries in accordance with this Liquidating Trust Agreement, the Plan, the Confirmation Order and Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust will not hold itself out as an investment company and will not conduct a trade or business.

### I.3 Transfer of Liquidating Trust Assets.

(a) The Debtors hereby transfer on the Effective Date all of the Liquidating Trust Assets to the Liquidating Trust for the sole benefit of the Liquidating Trust Beneficiaries pursuant to Bankruptcy Code sections 1123(a)(5)(B) and 1123(b)(3)(B) and in accordance with the Plan and the Confirmation Order, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other entities to the maximum extent contemplated by and permissible under Bankruptcy Code section 1141(c). Nothing in this Liquidating Trust Agreement is intended, or shall be construed, to effect a release, extinguishment or compromise of any claim or cause of action transferred to the Liquidating Trust pursuant to this Liquidating Trust Agreement. The Liquidating Trust Assets, the Liquidating Trust Proceeds and all other property held from time to time by the Liquidating Trust under this Liquidating Trust Agreement, and any earnings, including, without limitation, interest, on any of the foregoing, are to be applied by the Liquidating Trustee in accordance with the terms hereof, the Plan and the Confirmation Order for the benefit of the Liquidating Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth.

(b) To the extent that any assets of the Debtors cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded by Bankruptcy Code section 1123 or any other provision of the Bankruptcy Code (the “Non-Transferable Assets”), such Non-Transferable Assets shall be retained by the Debtors. The proceeds of any such Non-Transferable Asset retained by the Debtors shall be allocated to the Liquidating Trust pursuant to the Plan as if such transfer had not been restricted under applicable nonbankruptcy law. The Liquidating Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Non-Transferable Asset retained by the Debtors pursuant to the Plan and Confirmation Order. To the extent necessary or appropriate, the Liquidating Trustee may be designated as a representative of one or more of the Estates pursuant to Bankruptcy Code section 1123(b)(3)(B) to enforce or pursue any Non-Transferable Asset that remains property of any of the Estate.

(c) For all federal, state and local income tax purposes, all relevant parties (including, without limitation, the Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, whether the applicable Claims are Allowed on or after the Effective Date, including any amounts or other assets subsequently transferred to the Liquidating Trust (but only at such time as actually transferred) as (i) each holder of an Allowed Claim transferring such Allowed Claim to the Debtors in exchange for such holder’s share of the Liquidating Trust Assets in addition to other distributions to which such holder may be entitled under the Plan, and then (ii) as such holder transferring its share of the Liquidating Trust Assets to the Liquidating Trust in exchange for such holder’s share of Liquidating Trust Proceeds in accordance with the terms of the Plan (collectively, the “Beneficial Interests”). Such holder (and all holders collectively) shall be treated as the grantor(s) and owner(s) of the Liquidating Trust. To the extent Liquidating Trust Assets are

allocable to Disputed Claims that are the responsibility of the Liquidating Trust to resolve, all such relevant parties shall treat such Liquidating Trust Assets as transferred directly to the Disputed Claims Reserve or the reserves for Disputed General Unsecured Claims.

(d) As soon as possible after the Effective Date, but in no event later than one hundred and twenty (120) days thereafter, the Liquidating Trustee, in reliance upon such professionals as the Liquidating Trustee may retain in accordance with the Plan and this Liquidating Trust Agreement, shall make a good faith valuation of the Liquidating Trust Assets.

I.4 Liquidation of Liquidating Trust Assets. Pursuant to terms of the Plan and this Liquidating Trust Agreement, the Liquidating Trustee shall liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms hereof and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall exercise reasonable business judgment and liquidate the Liquidating Trust Assets to maximize net recoveries, provided, however, that the Liquidating Trustee shall be entitled to take into consideration the risks, timing and costs of potential actions in making determinations as to the maximization of recoveries. Such liquidations may be accomplished through (a) the prosecution, compromise, settlement, abandonment and/or dismissal of any or all claims, rights or causes of action, (b) the sale, abandonment and/or other disposition of the Liquidating Trust Assets (in whole or in combination, and including the sale of any claims, rights or causes of action), or (c) such other means as the Liquidating Trustee may determine, in the exercise of the Liquidating Trustee's reasonable business judgment, to be appropriate. The Liquidating Trustee may incur reasonable and necessary expenses in connection with the liquidation and conversion of the Liquidating Trust Assets into Cash or in connection with the administration of the Liquidating Trust.

I.5 Appointment and Acceptance of Liquidating Trustee. The Liquidating Trustee shall be deemed to be appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The Liquidating Trustee accepts the Liquidating Trust created by this Liquidating Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Liquidating Trustee, on behalf, and for the benefit, of the Liquidating Trust Beneficiaries, by each of the Debtors of all of their respective right, title and interest in the Liquidating Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order.

I.6 No Reversion to Debtors. In no event, except as otherwise provided in the Plan and/or this Liquidating Trust Agreement, shall any part of the Liquidating Trust Assets revert to or be distributed to any of the Debtors. To the extent that any property or Assets remain in the Liquidating Trust after satisfaction in full of all Allowed Claims and all of the costs and expenses of the administration of the Liquidating Trust, the Liquidating Trustee shall donate and distribute such Assets to a charitable organization selected by the Liquidating Trustee that is (a) described in Section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under Section 501(a) of the IRC, (c) not a "private foundation," as defined in Section 509(a) of the IRC, and (d) unrelated to the Plan Debtors, the Liquidating Trust and any insider of the Liquidating Trustee.

I.7 Incidents of Ownership. The Liquidating Trust Beneficiaries shall be the sole beneficiaries of the Liquidating Trust and the Liquidating Trust Assets, and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including, but not limited to, those powers set forth in Section VI.1 hereof.

## **ARTICLE II**

### **LIQUIDATING TRUST BENEFICIARIES**

II.1 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Beneficial Interest, the Liquidating Trustee shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidating Trustee may elect to make no payment or distribution with respect to the Beneficial Interest represented by the claims or demands involved, or any part thereof, and the Liquidating Trustee shall refer such conflicting claims or demands to the Bankruptcy Court and/or any court of competent jurisdiction, as may be appropriate, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Liquidating Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Liquidating Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order or (b) all differences have been resolved by a written agreement among all of such parties and the Liquidating Trustee, which agreement shall include a complete release of the Liquidating Trust and the Liquidating Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section II.1). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Liquidating Trustee shall hold in a segregated interest-bearing account with a U.S. financial institution any payments or distributions from the Liquidating Trust to be made with respect to the Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Liquidating Trustee shall transfer the payments and distributions, if any, held in the segregated account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

II.2 Rights of Liquidating Trust Beneficiaries. Each Liquidating Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidating Trust Beneficiary hereunder according to the terms of its Beneficial Interest. Each Liquidating Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of this Liquidating Trust Agreement, the Plan and the Confirmation Order. The interest of a Liquidating Trust Beneficiary is hereby declared and shall be, in all respects, personal property. Except as expressly provided hereunder, a Liquidating Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Liquidating Trust or the Liquidating Trust Assets.

II.3 Interest Beneficial Only. The ownership of a Beneficial Interest in the Liquidating Trust shall not entitle any Liquidating Trust Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

II.4 Evidence of Beneficial Interest. Ownership of a Beneficial Interest in the Liquidating Trust will be evidenced by the books and records of the Liquidating Trust maintained by the Liquidating Trustee. The Liquidating Trustee shall, upon written request of a Liquidating Trust Beneficiary, provide reasonably adequate documentary evidence of such Liquidating Trust Beneficiary's Beneficial Interest, as indicated in the books and records of the Liquidating Trust, provided, however, that no physical certificates shall be issued representing the Beneficial Interests. The expense of providing such documentation shall be borne solely by the requesting Liquidating Trust Beneficiary.

II.5 Transfers of Beneficial Interests. Beneficial Interests may be transferred, sold or assigned only by operation of law as provided for in this Liquidating Trust Agreement and the Plan. For the avoidance of doubt, the transfer of any Beneficial Interests in accordance with the terms of this Liquidating Trust Agreement or the Plan is not intended to create or facilitate the creation of an active trading market for the Beneficial Interests and the Liquidating Trustee shall not encourage or facilitate the creation of an active trading market in the Beneficial Interests.

### **ARTICLE III**

#### **DURATION AND TERMINATION OF LIQUIDATING TRUST**

III.1 Duration. The Liquidating Trust shall become effective upon the Effective Date and shall remain and continue in full force and effect until terminated as provided herein. The Liquidating Trust shall terminate (the "Termination Date") automatically upon the occurrence of the closing of the Chapter 11 Cases in accordance with the terms of Section 0 of this Liquidating Trust Agreement, but no later than at the end of three (3) years from the Effective Date; provided, however, that, on or prior to a date less than six (6) months prior to such termination, the Bankruptcy Court upon motion may extend the term of the Liquidating Trust if necessary to liquidate any remaining Liquidating Trust Assets (in a manner that would maximize the value of such assets). Notwithstanding the foregoing, multiple extensions can be obtained so long as Bankruptcy Court approval is obtained on a date within the period of six (6) months prior to the expiration of each extended term. The aggregate of all extensions shall not exceed two (2) years, unless the Liquidating Trustee receives a favorable ruling from the Internal Revenue Service ("IRS") that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) for federal income tax purposes. Notwithstanding the foregoing, after the termination of the Liquidating Trust, the Liquidating Trustee shall have the power to exercise all powers, authorities and discretions herein conferred until the complete distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries. Upon termination, the Liquidating Trustee shall provide a final distribution and final report to the Liquidating Trust Beneficiaries. Notwithstanding the foregoing, the Liquidating Trustee shall not unduly prolong the duration of the Liquidating Trust and shall at all times endeavor to dispose of and resolve all Liquidating Trust Assets and Claims to effect a final distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries as soon as reasonably practicable. Upon termination and complete satisfaction of its duties under the Liquidating Trust Agreement, the Liquidating Trustee will be forever discharged and released from all power,



duties, responsibilities and liabilities pursuant to the Liquidating Trust other than those attributable to fraud, gross negligence or willful misconduct of the Liquidating Trustee.

III.2 Closing of Chapter 11 Cases. Once all the Disputed Claims have become Allowed Claims or have been disallowed by Final Order, and all distributions in respect of Allowed Claims have been made in accordance with the Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the Liquidating Trustee (a) shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules and (b) shall be authorized under the Plan to take any necessary corporate action with respect to the Debtors' continued existence without the necessity for approvals or notices under any applicable state or other law.

III.3 Post-Termination. After the termination of the Liquidating Trust and solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all of the Liquidating Trust Assets, the Liquidating Trustee shall retain the books, records and files that shall have been delivered to or created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such books, records and files may be destroyed at any time following the date that is six (6) years after the final distribution of Liquidating Trust Assets (unless such books, records and files are necessary to fulfill the Liquidating Trustee's obligations herein) subject to the terms of any joint prosecution and common interests agreement(s) to which the Liquidating Trustee may be a party. Except as otherwise specifically provided herein, upon the final distribution of Liquidating Trust Assets, the Liquidating Trustee shall be deemed discharged and have no further duties or obligations hereunder, the Beneficial Interests shall be cancelled and the Liquidating Trust will be deemed to have been dissolved. In the event that there are *de minimis* Liquidating Trust Assets at termination, the Liquidating Trustee may donate such Liquidating Trust Assets to a charitable organization of the Liquidating Trustee's choice that is (a) described in Section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under Section 501(a) of the IRC, (c) not a "private foundation," as defined in Section 509(a) of the IRC, and (d) unrelated to the Plan Debtors, the Liquidating Trust and any insider of the Liquidating Trustee.

## **ARTICLE IV**

### **DISTRIBUTIONS AND ADMINISTRATION OF LIQUIDATING TRUST**

#### **IV.1 Generally.**

(a) Funding for the Distribution to Creditors. The distributions to holders of Allowed Claims contemplated under the Plan shall be funded by the Liquidating Trust Proceeds. After the payment or reservation, as applicable, the expenses of administering the Liquidating Trust, including, without limitation, the winding down and closing of the Chapter 11 Cases (including with respect to any fees and expenses incurred by any Professionals after the Confirmation Date), the fees and expenses of the Liquidating Trustee and its retained professionals, all Allowed Administrative Claims, Allowed Compensation Claims, Allowed Priority Tax Claims, Allowed Secured Claims,



Allowed Priority Non-Tax Claims, any remaining Cash (the “Remaining Cash”) shall be used to fund the Unsecured Claims Fund.

(b) No Further Court Authorization. Except as provided herein, the Plan or the Confirmation Order, the Liquidating Trustee will continue the orderly administration of the Liquidating Trust Assets and otherwise implement the provisions of the Plan, and, in connection with the foregoing, may transfer the Liquidating Trust Assets without necessity of any further order of the Bankruptcy Court and/or state court or other governmental body.

#### IV.2 Liquidation of Liquidating Trust Assets.

(a) The Liquidating Trustee will seek to resolve the Causes of Action in the interest of the holders of Allowed Claims for the benefit of the holders of such Claims. The Liquidating Trustee shall, in an expeditious but orderly manner and subject to the provisions of the Plan and this Liquidating Trust Agreement, resolve the Causes of Action, liquidate and convert to Cash the proceeds thereof; make timely distributions thereof in accordance with the terms of the Plan and this Liquidating Trust Agreement; and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall exercise reasonable business judgment and resolve the Causes of Action to maximize distributions and net recoveries for the benefit of holders of Allowed Claims; provided, however, that the Liquidating Trustee shall be entitled to take into consideration the risks, timing and costs of potential actions in making determinations as to the maximization of distributions and net recoveries. Such recoveries may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any of the Causes of Action (in whole or in combination, and including the sale of any claims, rights or causes of action).

(b) The Liquidating Trustee shall, in an expeditious but orderly manner, monetize and convert the Liquidating Trust Assets (other than the Causes of Action, which will be dealt with as provided in Section IV.2(a) hereof) to Cash and make timely distributions thereof. In so doing, the Liquidating Trustee shall exercise its reasonable business judgment in monetizing such Liquidating Trust Assets to maximize distributions and net recoveries. The monetization of such Liquidating Trust Assets may be accomplished through the sale or other monetization of such Liquidating Trust Assets (in whole or in combination) all as the Liquidating Trustee may determine is in the best interests of holders of Beneficial Interests.

(c) The Liquidating Trustee may incur any reasonable and necessary expenses in connection with resolution of the Causes of Action, which expenses shall be paid from the Liquidating Trust Assets. If, at the end of five (5) years after the Effective Date, any of Causes of Action or other Liquidating Trust Assets in the Liquidating Trust remain unsold (the “Unsold Assets”), the Liquidating Trustee shall submit a motion to the Bankruptcy Court, which shall set forth the Liquidating Trustee’s proposed treatment of the Unsold Assets. The Liquidating Trustee shall have no liability to any of the Debtors, their Estates, their Creditors, or any other party for the outcome of its decisions with respect to

the resolution and the monetization of the Causes of Action and other Liquidating Trust Assets, except for gross negligence or willful misconduct as provided in Section VII.3 hereof.

#### IV.3 Procedures for Treating and Resolving Disputed Claims.

(a) Process for Objection to Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as otherwise expressly provided herein, the Liquidating Trustee shall have the exclusive right to file, prosecute, resolve and otherwise deal with objections to Claims. The Liquidating Trustee shall serve a copy of each Claim objection upon the holder of the Claim to which the objection is made. Claims objections with respect to all Claims shall be made as soon as reasonably practicable but in no event later than the Claims Objection Bar Date. If the Liquidating Trustee wishes to extend the Claims Objection Deadline, it may do so pursuant to a motion, which may be approved without a hearing and without notice to any party.

(b) No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, if any portion of a Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

(c) Distributions After Allowance. Any Claim (or portion thereof) that is Disputed and then subsequently Allowed, shall be an Allowed Claim, not a Disputed Claim, in such amount and to the extent it is subsequently Allowed. Except as otherwise provided herein, if, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to the holder of such Claim, from the applicable fund or reserve in accordance with the Plan, the amount such holder would have received had its Claim been Allowed on the Effective Date as determined by distributions actually made to other holders of Allowed Claims.

#### (d) Disputed Claims.

##### (i) Resolution of the Disputed Claims.

- The Liquidating Trustee shall have the authority to settle all Disputed Claims without further Bankruptcy Court order. The procedures for resolving any Disputed Claims shall be as follows: at its option, in lieu of, or in addition to the filing of an objection, the Liquidating Trustee may (A) request that the holder of a Disputed Claim provide documentation to evidence the validity and amount of such Disputed Claim, and/or (B) submit a written settlement proposal to the holder of a Disputed Claim as to the validity, amount, priority and payment of such claim. The holder of a Disputed Claim may accept the Liquidating Trustee's settlement proposal at any time within fourteen (14) days of the Liquidating Trustee's mailing of such counter-proposal, or such additional time agreed to by the Liquidating Trustee. If the

settlement is reached, the Disputed Claim shall be deemed settled in accordance with the terms of the proposal, without the necessity for further order of the Bankruptcy Court and/or any court with competent jurisdiction). The Liquidating Trustee shall file with the Bankruptcy Court a quarterly notice of Disputed Claims resolved during the prior quarter, starting with the first quarter after the Effective Date.

- If no settlement is reached pursuant to the paragraph above, the Liquidating Trustee shall have the option to require the holder of a Disputed Claim to participate in a non-binding mediation process. All mediation pursuant to this Section shall be conducted at the offices of the Liquidating Trustee, pursuant to the applicable Bankruptcy Rules. In the event that mediation is scheduled and the holder of the Disputed Claim does not participate in the mediation, the Disputed Claim shall be forever disallowed and expunged in its entirety.
- If the Liquidating Trustee and the holder of a Disputed Claim are unable to reach a settlement on the Disputed Claim pursuant to the procedures set forth above, such Disputed Claim shall be submitted to the Bankruptcy Court for resolution. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve the Disputed Claim, then the Disputed Claim shall be submitted to the District Court for resolution.
- In lieu of the procedures set forth in this Section, the Liquidating Trustee may seek to settle, compromise or otherwise resolve any Disputed Claim at any time in accordance with any existing claims settlement procedures approved by the Bankruptcy Court.

(ii) Estimation of Disputed Claims. The Liquidating Trustee may at any time request that the Bankruptcy Court estimate any Disputed Claim pursuant to Bankruptcy Code section 502(c) regardless of whether the Debtors or the Liquidating Trustee previously objected to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidating Trustee, as applicable, may pursue supplementary proceedings to object to

the allowance of such Claim. On and after the Effective Date, Claims that have been estimated may be compromised, settled, withdrawn or otherwise resolved, without further order of the Bankruptcy Court.

(e) Cumulative Effect. All the objection, estimation and resolution procedures set forth in this Section are intended to be cumulative (where possible) and not exclusive of one another.

#### IV.4 Liquidating Trust Reserves.

(a) Trust Administration Account. The Liquidating Trustee shall have the authority to establish and maintain accounts (the “Trust Administration Account”) and utilize the funds in these accounts (i) to pay reasonable administrative expenses of the Liquidating Trust that are incurred (including, but not limited to, any taxes imposed on the Liquidating Trust or professional fees and expenses in connection with the administration and liquidation of the Liquidating Trust Assets and preservation of books and records); (ii) to satisfy other obligations or other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order or this Liquidating Trust Agreement, including fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Liquidating Trust Assets and the costs of investigating, prosecuting and resolving the Causes of Action and other Liquidating Trust Assets; and (iii) to satisfy any other obligations of the Liquidating Trust expressly set forth in the Plan.

(b) Priority Claims Reserve. On the Effective Date, the Liquidating Trustee shall set aside Cash sufficient in the aggregate to fund all (i) Allowed Administrative Expense Claims, (ii) Cash Settlement Claims, (iii) Compensation Claims, (iv) Statutory Fees, (v) Allowed Priority Tax Claims and (vi) Allowed Priority Non-Tax Claims.

(c) Disputed Claim Reserves.

(i) Establishment. On the Effective Date, the Liquidating Trustee shall set aside Cash sufficient in the aggregate to fund the Disputed Claims Reserves on account of the Disputed Claims in Classes 1, 2 and 3. Once such Disputed Claims are resolved and become Allowed, Cash in the Disputed Claims Reserves shall be made available for distribution to the holders of such newly Allowed Claims in accordance with the Plan. If all Claims in Classes 1, 2 and 3 are either Allowed and satisfied or disallowed, any remaining funds in the Disputed Claims Reserves shall be used to fund first the Trust Administration Account (if necessary), and the remainder shall be deposited into the Unsecured Claims Fund.

(ii) Funding Amount. The Liquidating Trustee may fund the Disputed Claims Reserves based on the face amount of the Disputed Claim holder’s Proof of Claim (or, if no Proof of Claim was filed, the amount set forth in the Schedules with respect to such Disputed Claim) or request that the Bankruptcy Court estimate the

amount of any Disputed Claim pursuant to Bankruptcy Code section 502(c), in which event the amount so estimated shall be deemed the amount of the Disputed Claim for purposes of funding the Disputed Claims Reserves.

(d) Other Reserves. On the Effective Date, and as may be necessary and appropriate from time to time, the Liquidating Trustee shall set aside amounts necessary to effect distributions for all Beneficial Interests in accordance with Section IV.5 of this Liquidating Trust Agreement.

(e) Establishment of the Unsecured Claims Fund. On the Effective Date or as soon as practicable thereafter, the Liquidating Trustee shall use the Remaining Cash to fund the Unsecured Claims Fund. In accordance with the Plan, the proceeds of the Unsecured Claims Fund shall be used to make distributions on account of the Allowed General Unsecured Claims in an amount equal to their *pro rata* share. “*Pro rata*” means the proportion that a Liquidating Trust Beneficiary’s Beneficial Interests on account of Allowed General Unsecured Claims bears to the aggregate amount of Beneficial Interests that are held by all Liquidating Trust Beneficiaries holding Allowed General Unsecured Claims.

#### IV.5 Distributions.

(a) Party Responsible For Making Distributions. The Liquidating Trustee shall be charged with making distributions under the Plan with respect to all Allowed Claims in accordance with the priority established by Section IV.5(g) hereof.

(b) Timing of Distributions.

(i) Distributions on Account of All Claims Other Than General Unsecured Claims. Unless otherwise provided herein, all distributions on account of all Allowed Claims other than Allowed General Unsecured Claims shall be made no later than thirty (30) days after the later of (x) the Effective Date or (y) the date that the applicable Claim becomes an Allowed Claim or (z) the Claims Objection Bar Date.

(ii) Distributions on Account of General Unsecured Claims. With respect to the distributions on account of the Allowed General Unsecured Claims, the initial distribution shall not be made unless and until the Unsecured Claims Fund contains at least \$[\_\_\_\_\_]. Thereafter, the Liquidating Trustee shall reasonably determine the timing of subsequent distribution(s) on account of Allowed General Unsecured Claims, taking into account the available Cash in the Unsecured Claims Fund and the costs and expenses of each such distribution.

(c) Withholding of Distributions. All distributions under the Plan and all related agreements shall be subject to any applicable withholding and reporting requirements. In addition to any other withholding authorized hereunder, in the case of a Cash distribution that is subject to withholding, the Liquidating Trustee may withhold from amounts distributable on account of Allowed

Claims any and all amounts determined in the Liquidating Trustee's reasonable and sole discretion to be required by any law, regulation, rule, ruling, directive or other governmental requirement. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and sell such withheld property to generate Cash necessary to pay the withholding tax. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Beneficiaries for all purposes of this Liquidating Trust Agreement. The Liquidating Trustee shall be authorized to collect such tax information from the holders of Allowed Claims (including, without limitation, social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trustee may require any of the holders of Allowed Claims to furnish to the Liquidating Trustee (i) its taxpayer identification number ("TIN") as assigned by the IRS, or (ii) in the case of Liquidating Trust Beneficiaries that are not United States persons for federal income tax purposes, certification of foreign status on IRS Form W-8BEN or W-8ECI, and the Liquidating Trustee may condition any distribution to any of holders of Liquidating Trust Interests upon receipt of such identification number or certification. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Liquidating Trustee may refuse to make a distribution to any Beneficiary that fails to furnish such tax information in a timely manner, until such information is delivered; provided, however, that upon the Beneficiary's delivery of such information, the Liquidating Trustee shall make such distribution to which the Beneficiary is entitled, together with any interest and income actually earned thereon; and, provided, further, that, if the Liquidating Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidating Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidating Trustee for such liability. The distribution amount of a Trust Beneficiary who fails to provide the required tax information will be classified as an undeliverable Distribution subject to the same treatment described in Section IV.5(d). Notwithstanding the foregoing, each holder of an Allowed Claim that receives a distribution under the Plan shall have the sole and exclusive responsibility for any taxes imposed by any governmental unit, including income, withholding and other taxes, on account of such distribution.

(d) Delivery of Distributions and Undeliverable Distributions. Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address of such holder as set forth on either the Schedules or the books and records of the Debtors, unless the Liquidating Trustee has otherwise been notified by the holder in writing of a change of address, including, without limitation, by the filing of a Proof of Claim by such holder that contains an address for such holder different from the address reflected on either the Schedules or the Debtors' books and records. In the event that any distribution to any holder is returned as undeliverable, no further distributions to such holder shall be made unless and until the Liquidating Trustee is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder, without interest. At the option of the Liquidating Trustee, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. Checks issued by the Liquidating Trustee in respect of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. All demands for undeliverable



distributions (including requests for re-issuance of any voided check) shall be made to the Liquidating Trustee on or before thirty (30) days after the expiration of the ninety (90) day period after the date such undeliverable distribution was initially made or the check was originally issued, as applicable. Thereafter, the amount represented by such undeliverable distribution (including a voided check) shall be deemed forfeited, and any Claim in respect of such undeliverable distribution (including a voided check) shall be disallowed, discharged and forever barred from asserting any such Claim against the Released Parties. Any distributions that are forfeited or otherwise cancelled shall be distributed to the holders of Allowed General Unsecured Claims (other than those whose distributions are deemed undeliverable hereunder) in accordance with the Plan. If either (i) all Allowed General Unsecured Claims (other than those whose distributions are deemed undeliverable hereunder) have been paid in full or (ii) the amount of any final distribution to any holder of a Allowed General Unsecured Claim would be \$25 or less, then no further distribution shall be made and any surplus Cash shall be donated and distributed to a charitable organization selected by the Liquidating Trustee that is (a) described in Section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under Section 501(a) of the IRC, (c) not a "private foundation," as defined in Section 509(a) of the IRC, and (d) unrelated to the Plan Debtors, the Liquidating Trust and any insider of the Liquidating Trustee.

(e) Setoffs. Except for any Claim that is Allowed in an amount set forth in the Plan, the Liquidating Trustee may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever that the Estate or a Debtor may have against the holder of any Claim, but neither the failure to do so nor the allowance of any such Claims, whether pursuant to the Plan or otherwise, shall constitute a waiver or release by any Debtor of any such claims the Debtor may have against such holder of any Claim, and all such claims shall be reserved for and retained by the Liquidating Trustee.

(f) Allocation of Plan Distribution Between Principal and Interest. All distributions in respect of any Allowed Claim shall be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter to the remaining portion of such Allowed Claim (including the interest portion of the Allowed Claim), if any.

(g) Priority of Distribution of Trust Proceeds. The Liquidating Trustee shall apply any Liquidating Trust Assets available for distribution and any proceeds therefrom in the order and reflecting the priorities set forth below:

(i) Costs and Expenses of the Liquidating Trust. First, the Liquidating Trustee shall pay all liabilities, costs and expenses of the Liquidating Trust, including, without limitation, (x) payment of all professionals, employees, or agents of the Liquidating Trust, (y) compensation due and payable to the Liquidating Trustee as specified in Section VII.6 of this Liquidating Trust Agreement; (z) reimbursement for any and all costs, expenses and liabilities incurred by the Liquidating Trustee in connection with the performance of its duties under this Liquidating Trust Agreement.

(ii) Administrative/Priority/Secured Claims. Second, the Liquidating Trustee shall pay Allowed Claims in accordance with the Plan, including (u) Allowed Administrative Expense Claims, (v) Allowed Secured Claims, (w) Compensation Claims, (x) Statutory Fees, (y) Allowed Priority Tax Claims and (z) Allowed Priority Non-Tax Claims.

(iii) Allowed Claims in Class 3. Third, to make the payments required under the Plan to holders of Beneficial Interests in accordance with the terms, provisions and priorities set forth in the Plan.

IV.6 Exchange Act. The Liquidating Trust is not intended to be subject to the registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) or the rules and regulations promulgated thereunder, and neither are the Beneficial Interests intended to be “securities” as that term is used in the Exchange Act and applicable U.S. securities laws. The Liquidating Trustee shall take such actions and implement its duties and powers with respect to the Liquidating Trust, to the furthest extent reasonably practicable, so as not to cause the Liquidating Trust to be required to register under the Exchange Act. Notwithstanding the foregoing, if the Liquidating Trust becomes subject to the registration requirements of the Exchange Act, the Liquidating Trustee shall cause the Liquidating Trust to register pursuant to, and comply with, the applicable reporting requirements of the Exchange Act.

IV.7 Fiscal Year. Except for the first and last years of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be the calendar year. For the first and last years of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be such portion of the calendar year that the Liquidating Trust is in existence.

#### IV.8 Books and Records.

(a) The Liquidating Trustee shall maintain in respect of the Liquidating Trust and the holders of Beneficial Interests historical books and records at its place of business for the period commencing on the date hereof through the term of this Liquidating Trust Agreement relating to the Liquidating Trust Assets and income of the Liquidating Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof in accordance with Article V of this Liquidating Trust Agreement and to comply with applicable provisions of law. Such books and records shall be maintained on modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust. Holders of Beneficial Interests shall have the right upon thirty (30) days prior written notice delivered to the Liquidating Trustee to inspect such historical books and records (including financial statements), provided, that, if so requested, such holder shall have (i) entered into a confidentiality agreement satisfactory in form and substance to the Liquidating



Trustee in its sole discretion; and (ii) agreed to bear the costs of the Liquidating Trust incurred in connection with such inspection.

(b) The Liquidating Trustee shall deliver reports to the Bankruptcy Court on a quarterly basis, which reports shall specify in reasonable detail (a) the status of the Liquidating Trust Assets assigned to the Liquidating Trust, including any settlements entered into by the Liquidating Trust; (b) the fees and expenses of the Liquidating Trust and the Liquidating Trustee, including any professional fees, incurred and/or earned during the most recent quarter; (c) the aggregate amount of Liquidating Trust Proceeds received by the Liquidating Trust during the most recent quarter; (d) the calculation of the Liquidating Trust Assets available for distribution for the next distribution date; and (e) the aggregate amount of distributions from the Liquidating Trust to Liquidating Trust Beneficiaries during the most recent quarter. The Liquidating Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Liquidating Trust and the Liquidating Trustee to be in compliance with applicable law.

(c) Subject to the terms of any order of the Bankruptcy Court, on or after the Effective Date, pursuant to Bankruptcy Code section 554(a), the Liquidating Trustee is authorized, from time to time, without further application to the Bankruptcy Court or notice to any party, to abandon or otherwise destroy documents and records (whether in electronic or paper format) that it determines, in its reasonable business judgment, are no longer necessary to the administration of either the Chapter 11 Cases or the Plan, notwithstanding any federal, state, or local law or requirement requiring the retention of the applicable documents or records.

IV.9 Insurance. Nothing in this Liquidating Trust Agreement shall diminish, impair or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover Claims against any Debtor.

IV.10 Disputes Regarding Compensation. To the extent a dispute regarding compensation arises, the Liquidating Trustee may file a motion and/or other pleadings with the Bankruptcy Court and retain advice and guidance or such other relief as may be appropriate concerning a resolution of the compensation matter(s) in dispute between the parties.

## **ARTICLE V**

### **TAX MATTERS**

V.1 Tax Treatment. For all federal and applicable state and local income tax purposes:

(a) All parties (including, without limitation, the Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date, including any amounts or other assets subsequently transferred to the Liquidating Trust (but only at such time as actually transferred) as (i) a transfer of the Liquidating Trust Assets (subject to any obligations relating to such Liquidating Trust Assets) directly

to the Liquidating Trust Beneficiaries and, to the extent the Liquidating Trust Assets are allocable to Disputed Claims that are the responsibility of the Liquidating Trust to resolve, to the Disputed Claims Reserve or the reserves for Disputed General Unsecured Claims, followed by (ii) the transfer by the Liquidating Trust Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve or the reserves for Disputed General Unsecured Claims) in exchange for Liquidating Trust Interests. Accordingly, the Liquidating Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(b) All parties shall treat the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation §301.7701-4(d) and as a “grantor trust” pursuant to the provisions of Subpart E of Subchapter J of Chapter 1 of the IRC and any comparable provision of state or local law, of which the beneficiaries of the Liquidating Trust are the owners and grantors, and treat the beneficiaries of the Liquidating Trust as the direct owners of an undivided interest in Liquidating Trust Assets (other than any assets allocable to Disputed Claims), consistent with their economic interests therein.

(c) In the alternative, if the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), then this Liquidating Trust Agreement is intended to empower the Liquidating Trustee to take such action as he shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3, including, if necessary, creating or converting it into a limited liability partnership or limited liability company that is so qualified, subject to the provisions of Sections VI.1(b), VI.1(b)(xii), VI.2, and IX.11 hereof.

(d) Each transfer of Liquidating Trust Assets (other than any assets allocable to Disputed Claims) to the Liquidating Trust shall be treated as a transfer of such assets directly to the holders of Claims that constitute Liquidating Trust Beneficiaries in partial satisfaction of their Claims (with each Liquidating Trust Beneficiaries receiving an undivided interest in such assets in accord with their economic interests in such assets), followed by the transfer by the Liquidating Trust Beneficiaries to the Liquidating Trust of such assets in exchange for the Beneficial Interests in the Liquidating Trust.

(e) The Liquidating Trustee will make a good faith valuation of the Liquidating Trust Assets. All parties must consistently use such valuation for all federal and applicable state and local income tax purposes.

(f) Allocations of the Liquidating Trust’s taxable income (other than income attributable to assets in the Disputed Claims Reserve or reserves for Disputed General Unsecured Claims) among the Liquidating Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (were such Cash permitted

to be distributed at such time, and without regard to any restrictions on distributions) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued at their tax book value and other than assets allocable to Disputed Claims) to the Liquidating Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such beneficiaries of the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the date such assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the IRC, applicable Treasury regulations, and other applicable administrative and judicial authorities and pronouncements.

(g) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Liquidating Trust of a private letter ruling if requested, or the receipt of an adverse determination by the IRS upon audit if not contested), the Liquidating Trust shall (i) timely elect to treat any Disputed Claims Reserve and the reserves for Disputed General Unsecured Claims as “disputed ownership funds” governed by Treasury Regulation section 1.468B-9 by timely making an election, and (ii) to the extent permitted by applicable law, report consistent with the foregoing for state and local income tax purposes. All holders of Beneficial Interests shall report, for all tax purposes, consistent with the foregoing. With respect to any Liquidating Trust Assets and any other income or gain of the Liquidating Trust allocable to Disputed Claims or the reserves for Disputed General Unsecured Claims, the Liquidating Trustee shall cause the Liquidating Trust to pay any taxes imposed on the Liquidating Trust by any federal, state or local, or any non-U.S. taxing authority. The amount of such taxes paid by the Liquidating Trust with respect to a Disputed Claim or the reserves for Disputed General Unsecured Claims (i) will reduce the amount distributed with respect to such Claim to the extent it becomes an Allowed Claim and (ii) to the extent such Claim does not become an Allowed Claim, will reduce distributions ratably to all holders in the same Class as such Claim; provided, however, that any taxes that reduce distributions pursuant to the foregoing clauses (i) and (ii) shall, for all purposes of this Agreement, be treated as amounts distributed to those holders of Claims whose distributions are so reduced.

(h) The Liquidating Trustee shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Liquidating Trustee or the Liquidating Trust under non-U.S. law relating to Taxes. The Liquidating Trustee, or any other legal representative of the Liquidating Trust, shall not distribute the Liquidating Trust Assets or proceeds thereof without having first obtained all certificates required to have been obtained under applicable non-United States law relating to Taxes.

V.2 Tax Reporting. The “taxable year” of the Liquidating Trust shall be the “calendar year” as those terms are defined in Section 441 of the IRC. The Liquidating Trustee shall file with the IRS returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Liquidating Trustee also shall send annually (within seventy-five (75) days after the end of each

calendar year) to each Liquidating Trust Beneficiary a separate statement setting forth the Liquidating Trust Beneficiary's share of items of income, gain, loss, deduction or credit, and shall instruct all of the Liquidating Trust Beneficiaries to report such items on their U.S. federal income tax returns or to forward the appropriate information to such Liquidating Trust Beneficiary's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. Such reporting shall also occur within sixty (60) days of the dissolution of the Liquidating Trust.

V.3 Tax Payment. The Liquidating Trustee shall be responsible for the payment, out of the Liquidating Trust, of any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve and the reserves for the Disputed General Unsecured Claims. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve or the Disputed General Unsecured Claims is insufficient to pay any portion of such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts distributable by the Liquidating Trustee as a result of the resolutions of such Disputed Claims.

V.4 Expedited Determination. The Liquidating Trustee may request an expedited determination of the taxes of the Liquidating Trust, including the Disputed Claims Reserve and Disputed General Unsecured Claims, under Bankruptcy Code section 505(b) for all returns for, or on behalf of the Liquidating Trust, for all taxable periods through the dissolution of the Liquidating Trust.

## **ARTICLE VI**

### **POWERS OF AND LIMITATIONS ON THE LIQUIDATING TRUSTEE**

#### **VI.1 Powers of the Liquidating Trustee.**

(a) The Liquidating Trustee shall have the responsibility for administering the Liquidating Trust, maintaining the Liquidating Trust Reserves, liquidating the Liquidating Trust Assets and making distributions under the Plan. Pursuant to the terms of the Plan and the Confirmation Order, the Liquidating Trustee shall have various powers, duties and responsibilities concerning the prosecution of certain litigation claims, the disposition of assets, the resolution of claims and numerous other obligations relating to maximizing the proceeds of the Liquidating Trust Assets and the administration of the Liquidating Trust.

(b) The Liquidating Trustee shall have such rights, powers and privileges expressly set forth in the Plan, the Confirmation Order and this Liquidating Trust Agreement, and as otherwise provided by applicable law. Subject to the other provisions herein, the Liquidating Trustee shall be expressly authorized to undertake the following actions, in the Liquidating Trustee's good faith judgment, in the best interests of the Liquidating Trust Beneficiaries and to maximize net recoveries therefor:

- (i) prosecute, settle or otherwise compromise or abandon for the benefit of the Liquidating Trust all Claims and Causes of Action transferred by the Debtors to the Liquidating Trust or arising in favor of the Liquidating Trust, including, without limitation, take any action with respect to appeals, counterclaims, and defenses of such claims and causes of action;
- (ii) settle any Claims and Causes of Action in an amount up to \$[.....] without further order of the Bankruptcy Court or notice to any party, provided, however, that to settle Claims and Causes of Action in an amount greater than \$[.....], the Liquidating Trustee must seek prior approval from the Bankruptcy Court;
- (iii) liquidate the Liquidating Trust Assets;
- (iv) execute any documents and take any other actions related to, or in connection with, the liquidation of the Liquidating Trust Assets and the exercise of the Liquidating Trustee's powers granted herein;
- (v) hold legal title to any and all rights of the Liquidating Trust Beneficiaries in, to or arising from the Liquidating Trust Assets;
- (vi) protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trustee by this Liquidating Trust Agreement by any method deemed reasonably appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law, and general principles of equity;
- (vii) take all reasonable actions to resolve Disputed Claims in accordance with Section IV.3 of this Liquidating Trust agreement and the terms of the Plan;
- (viii) make distributions of the Liquidating Trust Proceeds and other Liquidating Trust Assets to the appropriate Liquidating Trust Beneficiaries in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order;
- (ix) file, if necessary, any and all tax returns with respect to the Liquidating Trust (and the Disputed Claims Reserve and Disputed General Unsecured Claims) and pay taxes properly payable by the Liquidating Trust (and the Disputed Claims Reserve and Disputed General Unsecured Claims), if any;
- (x) make all necessary filings concerning the Liquidating Trust in accordance with any applicable law, statute or regulation, including, but not limited to, the Exchange Act;

(xi) determine and satisfy from the Liquidating Trust Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, created, incurred or assumed by the Liquidating Trust that the Liquidating Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court;

(xii) request any appropriate tax determination, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;

(xiii) in the event that the Liquidating Trustee determines that the Liquidating Trust Beneficiaries or the Liquidating Trust may, will or have become subject to adverse tax consequences, take such actions that will, or are intended to, alleviate such adverse tax consequences, including taking any and all necessary actions as the Liquidating Trustee shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under IRC Section 7704), including, if necessary, creating or converting it into a limited liability partnership or limited liability company that is so qualified;

(xiv) subject to the limitations set forth in Section VI.3 of this Liquidating Trust Agreement, retain and pay professionals, advisors and employees (including former advisors and employees of the Debtors), and contractors or other agents, including any and all estate professionals, from the Liquidating Trust Assets to carry out its duties and obligations hereunder;

(xv) invest monies received by the Liquidating Trust or the Liquidating Trustee, or otherwise held by the Liquidating Trust or the Liquidating Trustee in accordance with Section VI.4 hereof, consistent with the Liquidating Trust's status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and which actions are merely incidental to its liquidation and dissolution;

(xvi) create sub-trusts or title vehicles of which the Liquidating Trust or the Liquidating Trust Beneficiaries hold the beneficial or ownership interests, as applicable;

(xvii) purchase customary insurance coverage in accordance with Section IV.9 hereof;

(xviii) perform such functions and take such actions as are provided for or permitted in this Liquidating Trust Agreement, the Plan, the Confirmation Order or any other agreement executed pursuant to the Plan together with the right and authority to take such other actions, perform such other functions, and enter into such other agreements and instruments as the Liquidating Trustee, in the exercise of its reasonable business judgment, deems necessary or appropriate to fulfill the duties, rights and



powers of the Liquidating Trustee contemplated in this Liquidating Trust Agreement, the Plan, the Confirmation Order or applicable law; and

(xix) enter into, on behalf of the Liquidating Trust, escrow or similar agreements with U.S. financial institutions, on compensation and other terms acceptable to the Liquidating Trustee, for purposes of effecting distributions otherwise in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order and investing Liquidating Trust Assets in accordance with Section VI.4 prior to the distribution thereof

VI.2 Limitations on Liquidating Trustee. No part of the Liquidating Trust Assets shall be used or disposed of by the Liquidating Trustee in furtherance of any trade or business. The Liquidating Trustee shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company. The Liquidating Trustee shall not become a market-maker for the Beneficial Interests or otherwise attempt to create a secondary trading market for the Beneficial Interests. The Liquidating Trustee shall not engage in any investments or activities inconsistent with the treatment of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) while the Liquidating Trustees intend the Liquidating Trust to qualify as a liquidating trust; provided, however, that if the Liquidating Trust (or a limited liability company or limited liability partnership into which it shall be converted) shall be classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3, these restrictions shall not apply. The Liquidating Trustee shall be restricted to the liquidation of the Liquidating Trust Assets on behalf, and for the benefit, of the Liquidating Trust Beneficiaries; the distribution and application of Liquidating Trust Assets for the purposes set forth in this Liquidating Trust Agreement, the Plan and the Confirmation Order; and the conservation and protection of the Liquidating Trust Assets and the administration thereof in accordance with the provisions of this Liquidating Trust Agreement, the Plan and the Confirmation Order.

VI.3 Agents and Professionals; Employees. Subject to the Liquidating Budget, the Liquidating Trust may employ such counsel (which may be the same counsel employed by the Debtors), advisors (which may be the same advisors formerly employed by the Debtors) and other professionals selected by the Liquidating Trustee that the Liquidating Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court. The Liquidating Trust's professionals shall be compensated at the rates agreed to by the Liquidating Trustee and such professionals, and paid without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of the Liquidating Trust's professionals shall be satisfied out of the Liquidating Trust Assets and in accordance with the Liquidating Budget. In the event of any dispute concerning the entitlement to, or the reasonableness of, any compensation and/or expenses of any professional for the Liquidating Trust, either the Liquidating Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute.

VI.4 Investment of Liquidating Trust Monies. The Liquidating Trustee shall invest the Liquidating Trust Proceeds received by the Liquidating Trustee or otherwise held by the Liquidating Trustee in highly rated short-term investments of which the length of term shall be consistent with the obligations to pay costs, expenses, and other obligations and make distributions under ARTICLE IV of this Liquidating Trust Agreement, which investments shall consist of (a) short-term investments issued or guaranteed by the United States or by a department, agency or instrumentality of the United States; (b) other short-term instruments of the highest credit rating available of two nationally recognized rating agencies; or (c) other investment-grade, short-term debt investments.

VI.5 No Further Approvals Required/Transfer of Liquidating Trust Assets. In performance of its duties hereunder, the Liquidating Trustee shall have the rights and powers of a debtor in possession under Bankruptcy Code section 1107, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of the Plan. On and after the Effective Date, the Liquidating Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of the Plan, including, without limitation, the transfer of any Liquidating Trust Assets retained by the Liquidating Trust. As further set forth in this Liquidating Trust Agreement, without limiting the foregoing, the Liquidating Trustee shall be authorized pursuant to the Plan to transfer any or all of the Liquidating Trust Assets without necessity of any further notice or approval of the Bankruptcy Court and/or under any applicable state or federal law.

## **ARTICLE VII**

### **CONCERNING THE LIQUIDATING TRUSTEE**

VII.1 Generally. The Liquidating Trustee shall exercise such rights and powers vested in it by this Liquidating Trust Agreement, the Plan and the Confirmation Order, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs. No provision of this Liquidating Trust Agreement, the Plan or the Confirmation Order shall be construed to relieve the Liquidating Trustee from liability for its own gross negligence, fraud or reckless, intentional or willful misconduct, except that the Liquidating Trustee shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Liquidating Trustee in accordance with this Liquidating Trust Agreement.

VII.2 Reliance by Liquidating Trustee. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order:

(a) the Liquidating Trustee may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties; and

(b) persons (including any professionals retained by the Liquidating Trustee in accordance with this Liquidating Trust Agreement) engaged in transactions with the Liquidating



Trustee shall look to only the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Liquidating Trust Agreement, the Plan or the Confirmation Order, and the Liquidating Trustee shall have no personal or individual obligation to satisfy any such liability.

VII.3 Liability to Third Persons. No Liquidating Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trustee. The Liquidating Trustee and agents of the Liquidating Trustee shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust, except for its own gross negligence, fraud or reckless, intentional or willful misconduct, and all such persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Liquidating Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section VII.3 shall be deemed to release any Liquidating Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

VII.4 Non-liability of Liquidating Trustee for Acts of Others. Nothing contained in this Liquidating Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee of any of the liabilities, obligations or duties of the Debtors and shall not be deemed to be or contain a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidating Trust Assets or as to any other fact bearing upon the prior administration of the Liquidating Trust, so long as it has a good-faith basis to do so. The Liquidating Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. The Liquidating Trustee or any successor Liquidating Trustee shall not be liable for any act or omission of any predecessor Liquidating Trustee, nor have a duty to enforce any claims against any predecessor Liquidating Trustee on account of any such act or omission.

VII.5 Indemnity. The Liquidating Trustee and its agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives and principals (collectively, the “Indemnified Parties”) shall be indemnified by the Liquidating Trust solely from the Liquidating Trust Assets for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses that the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of the acts or omissions of the Liquidating Trustee solely in its capacity as such, provided, however, that the Liquidating Trust shall not be liable to indemnify any Indemnified Party for any act or omission constituting gross negligence; fraud; or reckless, intentional or willful misconduct. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Liquidating Trust to cover their reasonable expenses of defending themselves in any action brought

against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such, provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Liquidating Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 0. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified.

VII.6 Compensation and Expenses. Subject to the limitations set forth in the Liquidating Budget, the Liquidating Trustee shall be compensated at his or her standard hourly rate for its services and reimbursed for its out-of-pocket expenses incident to the performance of its duties under the Plan. The Liquidating Trustee shall be paid without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of the Liquidating Trustee shall be satisfied out of the Liquidating Trust Assets and shall be in accordance with the Liquidating Budget.

## **ARTICLE VIII**

### **SUCCESSOR LIQUIDATING TRUSTEES**

VIII.1 Resignation. The Liquidating Trustee may resign at any time upon not less than sixty (60) days' written notice to the Bankruptcy Court.

VIII.2 Effect of Resignation. The resignation, incompetency, bankruptcy or insolvency of the Liquidating Trustee shall not operate to terminate the Liquidating Trust or to revoke any existing agency created pursuant to the terms of this Liquidating Trust Agreement, the Plan or the Confirmation Order, or invalidate any action theretofore taken by the Liquidating Trustee. All fees and expenses incurred by the Liquidating Trustee prior to the resignation, incompetency or removal of the Liquidating Trustee shall be paid from the Liquidating Trust Assets, unless such fees and expenses are disputed by the successor Liquidating Trustee, in which case the Bankruptcy Court shall resolve the dispute, and any disputed fees and expenses of the predecessor Liquidating Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Liquidating Trust Assets. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Liquidating Trustee or directed by the Bankruptcy Court to effect the termination of such Liquidating Trustee's capacity under this Liquidating Trust Agreement; (b) promptly deliver to the successor Liquidating Trustee all documents, instruments, records and other writings related to the Liquidating Trust as may be in the possession of such Liquidating Trustee, provided, however, that the Liquidating Trustee may retain one copy of each of such documents for its purposes, subject to the terms of any joint prosecution and common interest agreement to which the Liquidating Trustee is party; and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidating Trustee.

VIII.3 Replacement. In the event that the Liquidating Trustee resigns, or in the event of the death of the Liquidating Trustee or other occurrence rendering the Liquidating Trustee incapacitated or

unavailable for an extended period of thirty (30) consecutive days, a replacement Liquidating Trustee shall be designated by the Bankruptcy Court with the consent of a majority of the Liquidating Trust Beneficiaries in existence at that time or the Bankruptcy Court, if such majority consent cannot be obtained. A notice of the identity of the new Liquidating Trustee shall be filed with the Bankruptcy Court promptly after the new Liquidating Trustee is designated.

VIII.4 Acceptance of Appointment by Successor Liquidating Trustee. Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in the case of the Liquidating Trustee's resignation, to the resigning Liquidating Trustee. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Liquidating Trust with like effect as if originally named Liquidating Trustee and shall be deemed appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The resigning or removed Liquidating Trustee shall duly assign, transfer and deliver to such successor Liquidating Trustee all property and money held by such resigning or removed Liquidating Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Liquidating Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidating Trustee upon the trusts herein expressed all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Liquidating Trustee.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

IX.1 Fiduciary Obligation. The Liquidating Trustee shall owe fiduciary duties to the Debtors, their respective Estates and the Liquidating Trust Beneficiaries.

IX.2 Governing Law. This Liquidating Trust Agreement shall be governed by and construed in accordance with the laws of the State of Arizona (without reference to conflicts of law).

IX.3 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust and the Liquidating Trustee, including, without limitation, the administration and activities of the Liquidating Trust and the Liquidating Trustee, provided, however, that notwithstanding the foregoing, the Liquidating Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any claims or causes of action assigned to the Liquidating Trust.

IX.4 Severability. In the event that any provision of this Liquidating Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Liquidating Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each

provision of this Liquidating Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

IX.5 Notices. Any notice or other communication required or permitted to be made under this Liquidating Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means; sent by nationally recognized overnight delivery service; or mailed by first-class mail:

(i) if to the Liquidating Trustee, to:

[ ]

(ii) if to any Liquidating Trust Beneficiary, to the last known address of such Liquidating Trust Beneficiary according to the Liquidating Trustee's records;

IX.6 Headings. The headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof.

IX.7 Plan. The terms of this Liquidating Trust Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. However, to the extent that the terms of the Plan are inconsistent with the terms set forth in this Liquidating Trust Agreement with respect to the Liquidating Trust, then the Plan and the Confirmation Order shall govern.

IX.8 Cooperation. The Debtors shall turn over or otherwise make available to the Liquidating Trustee at no cost to the Liquidating Trust or the Liquidating Trustee, all books and records reasonably required by the Liquidating Trustee to carry out its duties hereunder, and shall agree to otherwise reasonably cooperate with the Liquidating Trustee in carrying out its duties hereunder.

IX.9 Entire Liquidating Trust Agreement. This Liquidating Trust Agreement and the Annexes attached hereto contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

IX.10 Named Party. In pursuing any Claims and/or Causes of Action, or in disposing of any Assets of the Liquidating Trust, or otherwise administering the Liquidating Trust or any Liquidating Trust Assets, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Liquidating Trustee may pursue such matters and/or execute any such documents in the name of "Liquidating Trust" and/or in his own name as Liquidating Trustee or in such other

names or such representative capacities as necessary or appropriate in the Liquidating Trustee's discretion.

IX.11 Amendment. This Liquidating Trust Agreement may be amended by the Liquidating Trustee, provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Liquidating Trust Agreement that are inconsistent with the terms of the Plan or the Confirmation Order. Notwithstanding this Section IX.11, any amendments to this Liquidating Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an orderly manner the Liquidating Trust Assets (which will maximize the value of such assets) in accordance with Treasury Regulations Section 301.7701-4(d), or in the alternative, as allowed under Delaware law applicable to limited liability companies or limited liability partnerships, to not engage in a trade or business or encourage the creation of an active secondary trading market in the Beneficial Interests. In the event that the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), this Liquidating Trust Agreement may be amended by the Liquidating Trustee to the extent necessary for the Liquidating Trustee to take such action as it shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under IRC section 7704), including, if necessary, creating or converting it into a limited liability partnership or limited liability company that is so classified.

IX.12 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Liquidating Trust Agreement, and the word "herein" and words of similar import refer to this Liquidating Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Liquidating Trust Agreement. The term "including" shall mean "including, without limitation."

IX.13 Counterparts. This Liquidating Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**IN WITNESS WHEREOF**, the parties hereto have executed this Liquidating Trust Agreement or caused this Liquidating Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

**DEBTORS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_, as Liquidating Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit B**

**Non-Exclusive List of Causes of Action**

### **NON-EXCLUSIVE LIST OF RETAINED CAUSES OF ACTION**

The Plan preserves all causes of action not expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order.<sup>1</sup> The below is a non-exclusive list of Retained Causes of Action to which the Debtors and their Estates expressly reserve all rights to retain and prosecute, as the case may be, in accordance with Bankruptcy Code section 1123(b). The Debtors shall have, prior to the Effective Date, and the Liquidating Trustee shall have, on or after the Effective Date, sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting and otherwise administering (or decline to do any of the foregoing) any or all of the Retained Causes of Action, pursuant to the terms of the Plan and the Liquidating Trust Agreement.

For the avoidance of doubt, unless expressly released pursuant to the Plan or a Final Order, Causes of Action not listed on the attached list are not released, and the Estates or the Liquidating Trustee, as applicable, expressly retain all Causes of Action of any kind whatsoever against all Persons and Entities as listed in the Debtors' Schedules, including, without limitation, the categories of Causes of Action set forth below. Failure to attribute any specific Cause of Action to a particular Person or Entity on the Debtors' Schedules shall not under any circumstance be interpreted to mean that such cause of action is not retained against such entity. All possible Causes of Action, including those not listed below, are retained against all Persons and Entities not expressly released pursuant to the Plan or a Final Order. In the event of any apparent inconsistency between the releases of Persons or Entities in their capacities as such pursuant to the Plan or a Bankruptcy Court order and the attached list, such releases granted pursuant to the Plan or a Final Order shall govern.

No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to any or all of the Retained Causes of Action upon, after, or as a consequence of Confirmation or the occurrence of the Effective Date.

Section 1.12 of the Plan further defines Causes of Action to mean:

“any and all present or future claims, rights, legal and equitable defenses, offsets, recoupments, actions in law or equity or otherwise, choses in action, obligation, guaranty, controversy, demand, action suits, damages, judgments, third-party claims, counter-claims, cross-claims against any Person or Entity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, existing or hereafter arising, whether based on legal or equitable relief, whether arising under the Bankruptcy Code or federal, state, common, or other law or equity, whether or not the subject of a pending litigation or proceedings on the Effective Date or thereafter, including without limitation, all other actions described in the Plan, including Section 9.4 of the Plan.

Notwithstanding and without limiting the generality of Section 9.4 of the Plan, the Debtors have identified below certain specific Causes of Action, including, without limitation, the following:

- a. Claims related to contracts and leases;
- b. Claims related to pending and possible litigation;
- c. Claims related to accounts receivable and accounts payable;
- d. Claims related to warranty/manufacturing defects of chargers which overheated;
- e. Claims related to the DOE;
- f. Claims related to any Avoidance Actions;

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<sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the *Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated as of May 20, 2014 (the “Plan”).



- g. Litigation relating to objections of any Creditor claims;
- h. Objections, disputes or claims arising from any pending tax or other audits; and
- i. Claims against any landlord, insurance company or any other entity holding a deposit or advance payment that has not been returned.

**A. Claims Related to Contracts and Leases**

Unless otherwise released by the Plan, all Causes of Action are hereby reserved, which such Causes of Action are based in whole, or in part, upon any and all contracts and leases to which any Debtor is a party, or pursuant to which any Debtor has any rights whatsoever, regardless of whether such contract or lease is specifically identified herein. The claims and Causes of Action reserved include those against vendors, suppliers of goods and services, financial institutions or any other parties for: (i) for overpayments, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment or setoff; (ii) for breach of contract, wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors; (iv) for payments, back charges, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, service provider, lessor or other party; (v) for any liens, including mechanic's, artisan's, materialmen's, possessory or statutory liens held by any one or more of the Debtors; (vi) arising out of environmental or contaminant exposure matters against owners, landlords, lessors, lessees, environmental consultants or contractors, environmental or other governmental agencies or suppliers of environmental services or goods, including any solid or hazardous waste haulers, transporters or arrangers; (vii) counterclaims and defenses related to any contractual obligations; (viii) any turnover actions arising under Bankruptcy Code sections 542 or 543; (ix) for unfair competition, interference with contract or potential business advantage, infringement of intellectual property or any tort claims; and (x) for any claims against the Debtors' insurance carriers, including for payments or other amounts owed by such insurance carrier.

**B. Claims, Defenses, Cross-Claims and Counter-Claims Related to Litigation and Possible Litigation**

The Debtors are party to, or believe they may become party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Unless otherwise released by the Plan, all Causes of Action against or related to all Persons or Entities that are party to or that may in the future become party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, are hereby reserved.

**C. Claims Related to Accounts Receivable and Accounts Payable**

Unless otherwise released by the Plan, all Causes of Action against or related to all Persons and Entities that owe or that may in the future owe money to the Debtors, regardless of whether such entity is explicitly identified herein, the Debtors' Schedules, including Schedule B-16 for each Debtor, or any Plan Supplement, and any amendments thereto, are hereby reserved. Furthermore, the Debtors expressly reserve all Causes of Action and defenses or counterclaims against or related to all Persons and Entities that assert or may assert that the Debtors owe money to them. Certain claims against Persons or Estates arising from accounts receivables of Electric Transportation Engineering Corporation (d/b/a ECOTality North America), as identified on **Exhibit 1** attached hereto, as may be amended or supplemented, are hereby reserved.

**D. Claims Related to Warranty/Manufacturing Defects of Chargers That Overheated**

Unless otherwise released by the Plan, all Causes of Action against any Person or Entity arising out of or related to warranty or manufacturing defects or chargers or components of chargers, including specifically Rema USA, LLC and Roush Manufacturing, are hereby reserved.

**E. Claim Against United States of America and the DOE**

Unless otherwise released by the Plan, all Causes of Action against the United States of America and the DOE are hereby reserved

**F. Claims Related to Avoidance Actions**

Unless otherwise released by the Plan, all Causes of Action against any Person or Entity arising under or related to any and all actions that are filed or that may be filed pursuant to Bankruptcy Code sections 544, 545, 547, 548, 550 or 551, or applicable non-bankruptcy law that may be incorporated or brought under the foregoing Bankruptcy Code sections, or (b) any other similar actions or proceedings filed to recover property for or on behalf of the Estates, in each case, which may have or will be brought in the Debtors' bankruptcy proceedings, regardless of whether such Person or Entity is explicitly identified herein, the Plan, the Debtors' Schedules, including Statement of Financial Affairs 3(b), or any Plan Supplement, and any amendments thereto, are hereby reserved.

**G. Litigation Relating to Objections of Creditor Claims**

Unless otherwise released by the Plan, all Causes of Action against any Person or Entity arising out of or related to claims in the Debtors' chapter 11 cases, whether scheduled by the Debtors, even if not listed as disputed, unliquidated or contingent, or arising under a Proof of Claim filed in these cases, as well as the continuing right to object to any such claim, including specifically any claims of Cloud Utility Pty, Ltd, Brisbane Queensland, Australia, are hereby reserved.

**H. Objections, Disputes or Claims Arising From Any Pending Tax or Other Audits**

Unless otherwise released by the Plan, all Causes of Action against any Person or Entity arising out of or related to claims that result from any pending or disputed imposition of taxes, penalties or other charge, as well as the right to object or dispute such a charge under available administrative procedures or to seek relief from such charges as may be appropriate under Bankruptcy Code section 505, including specifically the sales tax audit conducted by the State of California and personal property tax claims under consideration in several jurisdictions, are hereby reserved.

**I. Claims Against Landlords, Insurance Companies or Any Other Person or Entity Holding a Deposit or Advance Payment That Has Not Been Returned**

Unless otherwise released by the Plan, all Causes of Action against any Person or Entity arising out of or related to funds paid to a landlord, insurance company or to any other Person or Entity as a deposit or advance payment, which has not been returned to the Debtors, are hereby reserved.

**J. Claims Against the Debtors' Current and Former Officers and/or Directors**

The releases contained in the Plan shall in no way release or discharge the current and former officers and directors, shareholders, affiliates, subsidiaries, principals, employees, agents, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers and consultants from any claim related to their prepetition conduct with respect to the prepetition operations and affairs of the Debtors. Such claims include, without limitation, claims for deepening insolvency; breach of fiduciary duties; misrepresentation, negligence, and other misconduct; aiding and abetting such misconduct; and fraudulent conveyances and preference recoveries.

**Exhibit 1**

**Non-Exclusive List of Accounts Receivable of  
Electric Transportation Engineering Corporation (d/b/a ECOtality North America)**

**Non-Exclusive List of Accounts Receivable of  
Electric Transportation Engineering Corporation (d/b/a ECotality North America)**

BUFFALO MATERIALS HANDLING  
CARLTON-BATES COMPANY  
EXIDE TECHNOLOGIES - JERSEY  
GNB INDUSTRIAL POWER  
GNB INDUSTRIAL POWER  
FACTORY DIRECT  
HOME DEPOT - ATLANTA  
INDUSTRIAL POWER SOURCE  
INTERSTATE POWERCARE  
J.H. RYDER - MISSISSAUGA  
J.H. RYDER - VILLE ST LAURENT  
LITE SOLAR CORP  
LUNDY INDUSTRIAL SALES LTD  
PRONERGI SOLUCIONES, SA DE CV  
SPECIALTY EQUIPMENT LLC  
SPECIALTY VEHICLES  
STANGCO INDUSTRIAL EQUIPMENT INC.  
RYDER TLC - INDIANAPOLIS  
WATTS EQUIPMENT COMPANY INC.  
YALE CAROLINAS INC

**Exhibit B**

**Biography of Proposed Liquidating Trustee**

# Carolyn J. Johnsen

## Member, Phoenix

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cjjohnsen@dickinsonwright.com

### Areas of Practice

- Bankruptcy & Restructuring
- Commercial Transactions
- Corporate
- Mergers & Acquisitions

### Education

Texas A&M University, B.S., Wildlife and Fisheries Science, 1977

Texas Tech University School of Law, J.D., 1980

Norwich University, M.A., Military History, 2011

### Acknowledgements

- AV Preeminent Peer Review Rated
- Listed in *The Best Lawyers in America* (2008-2014)
- Listed in *Southwest Super Lawyers* (2007-2014)
- AB Top Lawyer, Bankruptcy, *Arizona Business Magazine* (2008-2010)
- Top five finalist for Arizona Woman Magazine's 2009 Arizona Woman of the Year Award
- Top 50 Lawyers in Arizona, *Southwest Super Lawyers* (2007, 2009)
- Finalist for *Arizona Woman Magazine's* 2008 Golden Heart of Business Award
- Fellow, Litigation Counsel of America
- Distinguished Achievement Award, Sandra Day O'Connor College of Law (2007)
- Top 10 Leading Lawyers, *The Phoenix Business Journal* (2006)
- Best of the Bar, *The Business Journal* (2003-2005)
- Pioneer of the Year Award, National Association of Women Business Owners (1997-1998)
- Top Ten Women in Arizona Business (1997-1998)
- Honorary Squadron Commander, Luke Air Force Base

### Overview

Ms. Johnsen's experience includes creating complex plans of reorganization for multi-million dollar companies in a wide-range of industries, including mortgage lending, real estate, manufacturing, retail, refining, hospitality, aviation and energy-related.

Ms. Johnsen has advised private and public corporations in formulating and implementing managerial, personnel and operational structures. She has also guided numerous boards and senior managers in developing strategies and solutions for revising operations and restructuring debt to effectuate the emergence of a stronger business through bankruptcy, or to take advantage of acquisition and sale opportunities, including the application of bankruptcy procedures favorable to corporate securities regulation compliance. In addition, Ms. Johnsen has negotiated multiple multi-million dollar transactions with lenders, investment bankers and brokers, asset purchasers and sellers, and governmental agencies

### Prominent Assignments

Served as lead counsel for debtor company with a \$1 billion commercial loan portfolio, 2400 investors, and multiple borrowers; hired after Chapter 11 had been filed to reorder company in lieu of assumption of control by court-ordered trustee including: locating and installing new management; revamping board and structuring transfer of control to new management without impeding company operations; minimizing and controlling defensive litigation by defaulting borrowers against the company; resolving compliance issues with State Banking Department, SEC and State Attorney General to prevent shutdown of the company and assessment of penalties; protecting company's position against borrowers and competing lenders in six simultaneous multi-million dollar bankruptcies filed by company borrowers; stabilizing the company to permit a court and creditor approved plan of reorganization with a structured framework for investor recovery

Ongoing representation of Arizona's largest utility company in bankruptcy matters; have guided Board of Directors and General Counsel in formulating and implementing policies and procedures for dealing with consumer and commercial bankruptcies and state receiverships; have guided General Counsel and formulated measures designed to protect the company if a transacting party files bankruptcy; have negotiated and finalized multi-million dollar power agreements and plant sales in numerous bankruptcy and receivership cases

Served as lead counsel to owner of national sports franchise in a Chapter 11 bankruptcy by the franchise; negotiated with national league, creditors and municipal stadium owner regarding competitive sale of franchise, player contracts, team assets, and assumption of stadium rights and contracts

Represented international, NASDAQ-traded software company in commercial bankruptcy matters; guided General Counsel and formulated policies and procedures designed to protect the company if a customer files bankruptcy; represented interest in multiple bankruptcies filed throughout the country

Represented committee of creditors appointed by the bankruptcy court in the case of a publicly-held food manufacturing company with nationwide and international manufacturing facilities; negotiated creditors' interests in sale of multiple assets and a significant capital raise from international commercial sources; addressed SEC issues involving investigation of previous corporate management; met continuously with corporate management and financial consultants to restructure operations; prevented possible liquidation and negotiated plan of reorganization allowing company to expand and provide full and quick payment to creditors and an eventual return to shareholders

Represented committee of creditors in successful sale of publicly-held company engaged in the international manufacturing of assets of automobile chargers and

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## Areas of Practice

- Bankruptcy & Restructuring
- Commercial Transactions
- Corporate
- Mergers & Acquisitions

## related products

Represented committee of creditors in successful reorganization of pet care companies operating in four states

## Professional Involvement

- Arizona Bankruptcy Inn of Court, Founding Master, One of 15 lawyers selected state-wide, Board of Directors, 2012-2013
- Arizona's CARE Program, Founder and Committee Chair, 2006-2011
- Arizona Business Leadership Forum, Member, 2013
- Arizona Campaign for Women Lawyers Tribute to Sandra Day O'Connor, Co-Chair, 2006-2009
- Ninth Circuit Judicial Conference, Court-appointed Lawyer Representative, 2003-2005
- Litigation Counsel, Founding Advisory Board Member, 2006-present
- Committee of 100, ASU Law School, Member, Executive Committee
- DirectWomen Board Institute, Member, 2011
- American Academy of Trial Counsel, Founding Advisory Board Member, 2006-present
- Bankruptcy Court, Mediator, 2005-present
- Committee on Bankruptcy Self-Help Assistance, Court Appointed Member, 2005-2006
- Turnaround Management Association, Director, 1999; Member, 1998-2013
- Bankruptcy Appellate Panel Rules Committee, Court-appointed member, 2001
- American Bankruptcy Institute, Member, 1992-present
- Bankruptcy Appellate Panel Rules Committee, Court Appointed Member, 2001

## Publications/Presentations

- Presenter, "The Ins and Outs of Bankruptcy from Both the Debtor and Creditor Perspectives," Association of Corporate Counsel, Arizona Chapter (March 2013)
- Presenter/ Co-Author, "Managing the Franchise Relationship through Franchisee Receivership and Bankruptcy," ABA National Forum on Franchising (August 2012)
- Co-author, "Managing the Franchise Relationship Through Franchisee Receivership and Bankruptcy," ABA National Forum on Franchising (August 2012)
- Presenter/ Co-Author, "Chapter 11 for Mom and Pop," State Bar of Arizona CLE by the Sea (July 2012)
- Panelist, "Hot Topics in Bankruptcy," State Bar Convention (June 2012)
- Author, "The Basic Ins and Outs of the Bankruptcy Arena for District Energy System Operators," District Energy Magazine, International District Energy Association (August 2010)
- Panel Moderator "Bankruptcy Mediation: Why It Works and When to Use It," State Bar of Arizona Bankruptcy Section (May 2008)
- Author, "Bankruptcy As The New Beginning," The Phoenix Business Journal: State Bar Special Bankruptcy Section (October 2009)
- Author, "Mortgages Ltd.: Bankruptcy's Perfect Storm," Bankruptcy Litigation Reporter (September 2009)
- Author, "The Next Chapter? In Tough Times, Filing for Chapter 11 Can be a Viable Solution" Arizona Business Magazine (June 2009)
- Moderator "Arizona Real Estate 2008: A Perfect Storm of Financial Disaster - Finding Your Life Vest or Raft and Learning to Ride the Waves," Turnaround Management Association, Arizona Chapter Meeting (November 2007)
- Author, "Why You Absolutely Need to Know Something About Bankruptcy: A Guide

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## Areas of Practice

- Bankruptcy & Restructuring
- Commercial Transactions
- Corporate
- Mergers & Acquisitions

- to the Bankruptcy Practice," Reference Guide (2003, revised 2007)
- Author, "The 'B' Word is Not So Bad! Using Bankruptcy as a Business Tool," Arizona Journal of Real Estate & Business (June 2006)
- Presenter, "The War of the Worlds, Bankruptcy Versus . . .," American Bar Association Forum on Franchising (October 2005)
- Presenter, "Bankruptcy Abuse and Consumer Protection Act," State Bar Seminar (September 2005)
- Presenter, "The 'B' Word is Still Not So Bad!" Golf & Resort Development (August 2004 and 2005)
- Author, "Restructuring, Sales, Financing, Acquisitions," Gold Mountain Resort Development (August 2005)
- Presenter, "Bankruptcy Ethics," State Bar Convention (annual presentation June 2002-2006)
- Author, "When is Receiving a 'Preference' a Bad Thing?" High Profile Arizona (February 2005)
- Presenter, "Bankruptcy," Federal District Court Conference (annual 2002-2005)
- Presenter, "Trustees," Conference of Chief Bankruptcy Judges (December 2004)
- Presenter/Co-Author, "Bankrupt Franchisors and Franchisees," American Bar Association Forum on Franchising (October 2002)
- Co-author, "The War of the Worlds, Bankruptcy Versus . . .," ABA National Forum on Franchising (October 2002)
- Presenter, "Bankruptcy Litigation & Practice," PESI Continuing Education (annual 1992-2006)